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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 257.

FERDINAND DE ST. GERMAIN, APPELLANT,

vs.

EMANUEL BRUNSWICK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 28, 1886.

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a In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the District of California.

EMANUEL BRUNSWICK *vs.* FERDINAND DE ST. GERMAIN. No. 2468.

1 *Bill of Complaint.*

To the honorable the justices of the circuit court of the United States for the ninth circuit, within and for the district of California, sitting in equity:

Emanuel Brunswick, of San Francisco, State of California, brings this his bill against Ferdinand de St. Germain, doing business at the city and county of San Francisco, State of California, under the firm name and style of Jacob Strahle & Co., said defendant residing in said city, county, & State.

And thereupon your orator complains and says that heretofore, to wit, before the seventh day of January, in the year one thousand eight hundred and sixty-eight, your orator, Emanuel Brunswick, the complainant herein, was the original and first inventor of a certain new and useful invention, to wit, a revolving rack for holding billiard cues; that the same was a new and useful invention,
2 and consisted of a revolving rack for holding billiard cues; that the same was not known or used by others before said invention, and at the time of complainant's application for a patent therefor had not been in public use or on sale for two years, nor abandoned, nor was it proved to have been abandoned.

That the said Emanuel Brunswick, complainant herein, being so as aforesaid the inventor thereof, on the seventh day of January, A. D. 1868, upon due application therefor, did obtain the letters patent of the United States for the said invention granting and securing to him for the full term of seventeen years from the last-named date the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and improvement throughout the United States and the Territories thereof. Said letters patent were issued in due form of law under the seal of the Patent Office of the United States and were signed by the Secretary of
3 the Interior and countersigned by the Commissioner of Patents of the United States, were delivered to your orator, and bore date the day and year last aforesaid, a description whereof and of said invention more fully appears in said letters patent; which said letters patent are in due form of law and are ready in court to be produced by the plaintiff, or a duly authenticated copy thereof. And your orator says that he is still the owner and holder of the said letters patent and of the rights, privileges, and liberties by them granted.

That prior to the issuing of said letters patent as aforesaid all proceedings were had and taken which were required by law to be had or taken previous to the issuance of letters patent granting special rights and liberties for new and useful inventions.

And your orator further shows unto your honors that always since the grant of said letters patent, in the exercise of the full
4 and exclusive right and liberty so granted as aforesaid, your complainant has made, constructed, used, and vended to

others to be used the said improvements so patented, and has had and maintained, until the infringement hereinafter complained, possession of the said improvement and invention under and by virtue of said letters patent, and has never acquiesced in any invasion or infringement of his said rights.

And your orator further shows unto your honors that the respondent herein, having full knowledge of the premises and in violation of your orator's exclusive right, liberty, and privilege as aforesaid, and utterly disregarding the same, has, in violation of the said letters patent and before the filing of this bill of complaint, without the license of your orator or any license under his, said complainant's, said letters patent, in the said district and State of California, has manufactured, used, and sold and still con-
5 tinues to manufacture, use, and sell many revolving racks for holding billiard cues embracing the improvement and invention described in said letters patent and so secured to your orator: how many your orator is unable to say, but prays that the respondent may discover and set forth in his answer to this bill; and your orator alleges that the revolving racks for holding billiard cues made, used, and sold by the respondent are infringements of said letters patent, and were made according to the invention therein described and thereby protected and secured to your orator as aforesaid, and contrary to law and the form of the statutes of the United States in such cases made and provided.

And your orator further says that on or about the seventeenth day of February, A. D. 1873, a suit was commenced in the circuit court of the United States of America in the seventh circuit, and in the district of Illinois, by the complainant, Emanuel Brunswick, who was then and is now the owner of said letters
6 patent and of the rights, liberties, and privileges by them granted and conferred, against J. M. Brunswick, Anton F. Froscher, Moses Bensinger, and Leo Schmidt for infringement of said letters patent; that in said action the validity of said letters patent was put in issue by the pleadings and fully adjudicated on the trial thereof, and said court, on or about the seventeenth day of May, A. D. 1877, adjudged said letters patent to be valid in all respects and in full force and effect, and entered a decree and judgment in favor of the complainant, Emanuel Brunswick, and against the defendants above named in said action. Said court then and there had full jurisdiction of the parties to and subject-matter of said action, and that said judgment was rendered after hearing the proofs adduced by both parties in said action, and the attorneys for both parties appearing and contesting the said action.

And your orator shows that he is informed and believes
7 and so states to be true that the respondent in this action intends to continue to infringe upon said letters patent and to unlawfully use said inventions, as he has already been doing.

Your orator further shows that he has requested the respondent to desist from the use of said invention and to account to your orator for the damages which he has sustained, but that the respondent refuses either to so desist or account.

And your orator further shows unto your honors that he will be subject to great and irreparable injury unless he shall obtain from your honors the relief hereby sought.

To the end, therefore, that the said respondent may, upon his corporal oath, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and thereunto distinctly interrogated, according to the best of his knowledge, information, and belief, and more especially that he may answer and set forth—

8 1st. Whether he has or has not manufactured before the filing of this bill large numbers of revolving racks for holding billiard cues, and how many, and how the same are constructed, and wherein they differ from those described in the said letters patent.

2d. Whether he has on hand a large number, and how many, revolving racks for holding billiard cues, and how the same are constructed.

And that the said respondent may answer the premises and he may be decreed to account for and pay over to your orator all such gains and profits as have or might have accrued to him from purchasing or making and selling or using such improvements in revolving racks for holding billiard cues.

And your orator further prays this honorable court to assess or cause to be assessed the damages which the complainant,

9 Emanuel Brunswick, has sustained by reason of the premises and the infringements herein complained of, and that said damages when so assessed may be increased to an amount not exceeding three times the sum at which they shall be assessed, and that the respondent be adjudged and decreed to pay to your orator the damages so assessed, and also the amount to which they may be increased, in addition to the gains and profits above prayed for.

And your orator further prays that the respondent herein may be restrained by an injunction issuing out of this honorable court from making, using, or vending to others to be used or transferring in any way — embracing the improvements aforesaid so secured to your orator as aforesaid, and that the revolving racks for holding billiard cues so manufactured or purchased or in any manner obtained by them, and now in possession of said respondent, may be destroyed or delivered up to your orator, and for such other and further

10 relief as the nature of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also the writ of subpœna, directed to the said respondent, Ferdinand de St. Germain, doing business, as aforesaid, under the firm name & style of Jacob Strahle & Co., commanding him to appear and answer this bill of complaint and to do and receive what to your honors shall seem meet.

And your orator will ever pray, &c.

ROTHCHILD & MARX,
Solicitors for Complainant.

STATE OF CALIFORNIA,
City and County of San Francisco, } *ss:*

Emanuel Brunswick, being duly sworn, on his oath says that he is the complainant in the foregoing-entitled case; that he has heard the foregoing bill of complaint read and knows the contents
11 thereof, and that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

EMANUEL BRUNSWICK.

Subscribed and sworn to before me this twelfth day of October, A. D. 1880.

DAVID LYON,
Commissioner U. S. Circuit Court, Dist. of Cal.

Endorsed: Filed October 25th, 1880. L. S. B. Sawyer, clerk.

12 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

The President of the United States of America, Greeting, to Ferdinand de St. Germain, doing business at the city and county of San Francisco, State of California, under the firm name and style of Jacob Strahle & Co.:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room, in San Francisco, on the first Monday of December, A. D. 1880, to answer a bill of complaint exhibited against you in said court by Emanuel Brunswick, who is a citizen of the State of California, and to do and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty of five thousand dollars.

13 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of
[SEAL.] October, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the 105th.

L. S. B. SAWYER, *Clerk,*
By J. F. O'BEIRNE,
Deputy Clerk.

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of December next at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

L. S. B. SAWYER, *Clerk,*
By J. F. O'BEIRNE,
Deputy Clerk.

Endorsed.

U. S. MARSHAL'S OFFICE, DISTRICT OF CALIFORNIA.

14 I hereby certify that I received the within subpœna on the 26th day of October, 1880, and personally served the same on the 26th day of October, 1880, by delivering to and leaving with Ferdinand de St. Germain, said defendant, personally, at the city and county of San Francisco, in said district, a certified copy thereof, together with a certified copy of bill of complaint attached thereto.

San Francisco, October 26th, 1880.

A. W. POOLE,
U. S. Marshal,
By C. H. PETERSON, *Deputy.*

Filed October 26th, 1880.

L. S. B. SAWYER, *Clerk,*
By J. F. O'BEIRNE, *Dep'y Cl'k.*

15 *Demurrer.*

In the Circuit Court of the United States for the Ninth Circuit, within and for the District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
FERDINAND DE ST. GERMAIN, Defendant. } Equity.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, does demur to the said bill, and for cause of demurrer shows that the complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery from this defendant or to any relief against him.

16 And for a further cause of demurrer this defendant shows that by the said bill the complainant seeks the enforcement of a penalty against this defendant, and that the discovery demanded, and every part thereof, is in aid of the same, when by the ancient and approved rule of this honorable court no person shall exhibit a bill of complaint calling for a discovery to aid in the enforcement of a penalty.

And for a further cause of demurrer the defendant says that the said complaint does not describe or set forth any new or useful invention or discovery or any invention or discovery patentable under the patent laws of the United States, but, on the contrary, the descriptions of the alleged inventions contained in said complaint show that the same is not patentable.

Wherefore defendant prays judgment that said action may be dismissed.

WHEATON & SCRIVNE
Att'ys for Defendant.

17 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

F. de St. Germain, being duly sworn, doth depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

F. DE ST. GERMAIN.

Subscribed and sworn to before me this 16 day of Feb., 1881.

[SEAL.] GEO. T. KNOX,
Notary Public.

I certify that, in my opinion, the foregoing demurrer of F. de St. Germain, defendant, to the bill of complaint of E. Brunswick, complainant, is well founded in law and proper to be filed in the above cause.

M. A. WHEATON,
Counsel for Defendant.

18 Endorsed: Due service of a copy of the within demurrer admitted this 16th day of Feb., 1881. Jno. L. Boone, att'y for complainant. Filed 16 February, 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

19 *Notice Waiving Penalty.*

In the United States Circuit Court, District of California, Ninth Circuit.

EMANUEL BRUNSWICK, Complainant,
vs.
FERDINAND DE ST. GERMAIN, Respondent.

To Ferdinand de St. Germain, respondent, and Messrs. Wheaton & & Scrivner, his solicitors:

The above-named complainant hereby waives the penalty asked for in the prayer of the bill filed in the above-entitled case.

JOHN L. BOONE,
Solicitor for Complainant.

Endorsed: Service and receipt of a copy of within notice admitted this 2nd day of April, 1881. Wheaton & Scrivner, attorney for def't. Filed April 4th, 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

20 *Order Overruling Demurrer.*

At a stated term, to wit, the July term, A. D. 1881, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 19th day of September, in the year of our Lord one thousand eight hundred and eighty-one.

Present: The Honorable Lorenzo Sawyer, circuit judge.

E. BRUNSWICK
vs.
F. DE ST. GERMAIN.

This cause, heretofore argued and submitted to the court for consideration and decision upon the demurrer herein, having been duly considered, it is ordered that said demurrer be, and the same is hereby, overruled, with leave to defendant to answer on
21 or before the next rule day on payment of twenty dollars costs.

I hereby certify that the foregoing is a full, true, and correct copy of an order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this
[SEAL.] 27 day of May, 1886.

L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

22 In the Circuit Court of the United States for the Ninth Circuit, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
FERDINAND DE ST. GERMAIN, Defendant.

Answer.

This defendant reserving to himself all right of exception to the said bill of complaint, for answer thereto saith:

Defendant denies that the said complainant was the original or first inventor of any new or useful invention consisting of a revolving rack for holding billiard cues.

Denies that said alleged invention was new at the time of the alleged discovery thereof; on the contrary, defendant avers that at the time of the alleged discovery thereof and of complainant's
23 application for a patent, as alleged in said bill of complaint, the same was well known to the public and in common use.

Defendant further says that he has been informed and admits to be true that, upon application by the complainant, letters patent of the United States were granted and issued to said complainant on the 7th day of January, 1868, for said alleged invention, and this defendant says that he does not know and is not informed, save by the said bill of complaint, whether or not the said complainant did properly make application for said patent and did comply with all or any of the requirements of law and did have such patent issued to him in due form of law, and leaves the complainant to make such proof thereof as he shall be advised is material.

And defendant denies, upon his information and belief, that by virtue of any such patent as mentioned in said bill of com-
24 plaint said complainant became or ever was possessed of or vested with any exclusive right to make, use, or sell in the

United States or elsewhere the alleged invention patented by the said letters patent.

Denies that said alleged invention is of any utility or value, or that the same has been introduced into public use, or that the public have acquiesced in and acknowledged complainant's exclusive right to the same or any portion thereof.

And defendant avers, upon his information and belief, that the suit between Emanuel Brunswick, as complainant, and J. M. Brunswick *et al.*, defendants, which, it is alleged, was commenced on the 20th day of February, 1873, in the 7th circuit, district of Illinois, and in which a decree was entered May 17th, 1877, was collusive and fraudulent; that the complainant and principal defendant therein were and are brothers; and defendant, upon his information and belief, denies that there was any substantial defense made in the case, or that there was a full or fair hearing thereof.

And defendant, further answering, avers, upon his information and belief, that the same invention and discovery was patented to Robert J. Anderson by United States letters patent No. 113,719, bearing date April 18th, 1871, and also to Edward Gleason by U. S. letters patent No. 15946, bearing date October 21st, 1856, and also to said Edward Gleason by U. S. letters patent No. 18740, bearing date Dec. 1st, 1857, and also to E. Richmond by U. S. letters patent No. 69026, bearing date Sept. 17th, 1867, and also to G. W. Hagby by U. S. letters patent No. 19773, bearing date March 30th, 1858, and also to W. W. Patterson by U. S. letters patent No. 138,687, bearing date May 6th, 1873, and also to M. Stone by U. S. letters patent No. 135,382, bearing date Jan. 28th, 1873, and also to W. H. & J. H. Farrar by U. S. letters patent No. 18042, bearing date Aug. 25th, 1857.

And this defendant, further answering, denies that he has ever contributed to injure said complainant or to defraud him of any profits, benefits, and advantages whatever.

And this defendant denies that he has at any time heretofore manufactured, used, or sold, or that he is now manufacturing, using, or selling, in the district of California or elsewhere, any revolving billiard-cue racks manufactured in accordance with the descriptions set forth in the aforesaid letters patent, and says that he has not in any way infringed upon and does not in any way infringe said patent.

And the defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill of complaint charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver and maintain as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

WHEATON & SCRIVNER,
Solicitors for Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Ferdinand de St. Germain, being first duly sworn, upon his oath deposes and says that he is the defendant in the above-entitled cause; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to such matters that he believes it to be true.

F. DE ST. GERMAIN.

Subscribed and sworn to before me this 30th day of September, 1881.

A. F. BENJAMIN,
Notary Public.

[SEAL.]

Endorsed: Service of the within answer and receipt of a copy thereof admitted this 3d day of October, 1881. Boone & Miller, attorneys for plaintiff. Filed 3d day of October, A. D. 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

Circuit Court of the United States for the District of California, Ninth Judicial Circuit.

EMANUEL BRUNSWICK, Complainant,
vs.
FERDINAND DE ST. GERMAIN, Defendant.

The Replication of Emanuel Brunswick, Complainant, to the Answer of Ferdinand De St. Germain, Defendant.

Replication.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray, as in and by the said bill he has already prayed.

BOONE & MILLER,
Solicitors for Complainant.

Endorsed: Service of the within replication and receipt of a copy thereof admitted this 7th day of November, 1881. Wheaton & Scrivner, attorneys for defendant. Filed 7th day of Nov., A. D. 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

31 *Interlocutory Decree.*

In the United States Circuit Court, District of California, Ninth Circuit.

EMANUEL BRUNSWICK, Complainant,
vs.
FERDINAND DE ST. GERMAIN, Doing Business under the Firm Name and Style of J. Strahle & Co. } No. 2468.

At a stated term of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room thereof, in the city and county of San Francisco, on Monday, the 5th day of May, A. D. 1884.

Present: The Honorable George M. Sabin, judge of the district of Nevada, holding said circuit court.

This cause having come on to be heard upon the bill of
32 complaint herein, the answer of the defendant, the replication of the complainant, and the proofs, oral, documentary, and written, taken and filed in said cause, and having been argued by counsel for the respective parties and submitted to the court for consideration and decision—

Now, therefore, in consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows, to wit:

That the letters patent of the United States of America numbered 72969, granted and issued to Emanuel Brunswick, the complainant in this suit, on the 7th day of January, 1868, is good and valid in law; that the said Emanuel Brunswick was the first and original inventor of the improvement in revolving cue racks as described and claimed in said letters patent and in the specification thereto annexed, and that said Emanuel Brunswick, the complain-
33 ant in this suit, is the sole and exclusive owner of said letters patent.

That the defendant has infringed upon the said letters patent and upon the exclusive rights of the complainant under the same—that is to say, by making and using and selling revolving cue racks containing said invention and improvements, as charged in the bill of complaint herein.

And it is further ordered, adjudged, and decreed that the complainant do recover of and from the defendant the profits, gains, and advantages which the said defendant has received or made or which has arisen or accrued to the said defendant from the said infringement by the making, using, and selling or the making, using or selling revolving cue racks, and also the damages which the complainant has sustained thereby.

34 And it is further ordered, adjudged, and decreed that it be referred to S. C. Houghton, Esq., the standing master in chan-

cery of this court, residing in the city and county of San Francisco, district and State of California, to ascertain and take and state and report to this court an account of the number of revolving cue racks made and used and sold by the defendant, and also the gains, profits, and advantages which the said defendant has received or which have arisen or accrued to defendant since the 7th day of January, 1868, from infringing the said exclusive right of the said complainant by the making, using, and selling or the making, using, or selling of the revolving cue racks described and claimed in said letters patent No. 72969; also the damages which the complainant has sustained thereby.

And it is further ordered, adjudged, and decreed that the
35 complainant on such accounting have the right to cause an examination of the defendant and each of his agents, servants, and workmen, or other witnesses as may be necessary to take said accounting, and also the production of the books, vouchers, and documents of which said defendant and each of his attorneys, servants, agents, and workmen may be possessed before said master from time to time as such master shall direct.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued in this case against the said defendant and each of his agents, servants, clerks, and workmen and all persons claiming or holding under or through him from making or using or selling or in any way disposing of revolving cue racks embracing the improvements and invention set forth in the said letters pat-
36 ent No. 72969 and covered by the claims therein contained pursuant to the prayer of the bill of complaint.

(Signed) GEO. M. SABIN,
Judge of the District of Nevada, Holding said Circuit Court.

Endorsed: Filed and entered May 12, 1884. L. S. B. Sawyer, clerk.

37 U. S. Circuit Court, District of California.

EMANUEL BRUNSWICK
v.
F. DE ST. GERMAIN.

Master's Report in the Matter of the Reference for Accounting.

Report.

In the Circuit Court of the United States for the Ninth Circuit and District of California.

EMANUEL BRUNSWICK
v.
FERDINAND DE ST. GERMAIN.

Master's report in the matter of the reference to the master for accounting.

38 To the honorable the circuit court of the United States for the ninth circuit and district of California:

In pursuance of the decretal order of this honorable court, made

and entered in the above-entitled cause on the 12th day of May, 1884, directing the undersigned, as master in chancery of said court, to ascertain and take and state and report to said court an account of the number of revolving cue racks made and used and sold by the defendant, and also the gains, profits, and advantages which the said defendant has received or which have arisen or accrued to defendant since the 7th day of January, 1868, from infringing the exclusive right secured to complainant by the letters patent in said decretal order described by the making, using, and selling or the making, using, or selling of the revolving cue racks described
39 and claimed in said patent; also the damages which the complainant has sustained thereby, I, the said master, having been attended at several times by the respective parties to said cause and their counsel and having taken the testimony of the several witnesses produced in this behalf and having considered said testimony and the other evidence adduced, do report:

Upon complainant's demand the respondent produced a statement or memorandum which was introduced in evidence and marked "Exhibit A," which was stated by him to have been made up from his books of account and which he declared contained a memorandum of all the revolving cue racks which he had ever sold, with the exception of thirty which he had purchased from a house in Chicago with which the complainant was connected. Re-
40 spondent's order books being produced, it became apparent from an inspection of them that changes had been made in many of the charges therein since they were originally entered, and after a careful and laborious examination of said order books, ten in number, the master was satisfied that entries with reference to revolving cue racks to the number of two hundred and eighty-five had been falsified. Of this number nineteen were included in the statement, Exhibit A, although they did not, in the altered condition of the order books, appear entered therein. The total number of revolving racks charged upon the order books, as originally entered, was three hundred and forty-two. From that number should be deducted the thirty racks purchased from the Chicago house and eighteen racks which, according to the testimony of Eckhardt, respond-
41 ent's managing clerk, were either never delivered to or were never used by the persons to whom they were charged, or were charged more than once, or were not revolving racks. Mr. Eckhardt further testifies that a number of racks charged, after having been delivered to and used for a time by purchasers or lessees, found their way back to respondent's establishment, but that some of these second-hand racks were subsequently sent out with tables and again charged in the books. No attempt is made, however, to prove the number of second-hand racks so imposed upon customers, and, it appearing that the racks were once sent out and money received for their use, the burden should be upon the respondent to prove specifically cases of duplication of the character referred to.

Two hundred and ninety-four is therefore the number of revolving cue racks which may be said to have been proved to have
42 been sold by respondent in infringement of complainant's

said rights under his patent. It is undoubtedly true that a greater number was actually sold by respondent, as he himself testifies that he could not tell from his books what kind of a cue rack was furnished with a particular billiard table, except in special cases, though there were some entries in his books showing that a revolving rack was ordered, and Mr. Eckhardt also testifies that very often a purchaser of a table will not suggest what kind of rack he wants, and that when a revolving rack was sold it was not always entered in the books as such. This testimony is supplemented by that of Mr. Imhaus, at present a salesman in the complainant's establishment, who states that he was salesman for respondent from March, 1879, to May, 1880, and that during that time "the revolving racks were all the go—that is, everybody demanded them
43 and wanted them because they took up less room and they were a novelty. In fact, the general order of Mr. St. Germain was that every table should go with revolving cue racks in preference to any others because they were cheaper."

It is in evidence that one hundred and forty-seven racks were made for and delivered to respondent by different parties, at different prices, at a total cost to him of seven hundred and ninety-seven dollars, an average cost of five dollars and forty-two cents each. This sum is undoubtedly in excess of the average cost of the racks to respondent, as delivered, for one Heney testifies that he did the greater portion of St. Germain's work prior to 1879, and that he made for him more racks than the twenty-four made in 1875, which were all as to which he could positively testify, and that the
44 price which he received was four dollars for each rack. Two other witnesses, each of whom charged less than the average cost price above stated, furnished respondent with more revolving racks than the number to which they positively testified, while Knorp, who received much the highest prices for these racks, has accounted for all that he sold to respondent.

The revolving racks came to the establishment of respondent in a "knocked-down" condition. As to the amount of labor and expense required to be expended upon them before they were ready for the market, respondent's foreman has testified upon the reference, but his statements are so obviously exaggerated that no weight has been given by the master to his testimony. From the evidence of the other witnesses, bearing upon the questions of the first cost of the racks and the subsequent expense of finishing them, it would appear that the net cost to respondent of
45 the revolving cue racks sold by him may fairly be calculated to have been six dollars each.

Complainant has attempted to prove an established royalty upon his infringed patented invention, but in this has failed. He testifies that he several years ago brought suit in Chicago against an infringer and obtained a judgment sustaining his patent, and subsequently agreed with the infringers upon a basis of settlement of his damages arising from the infringement. His statement as to the amount which he received as damages does not correspond, however, with the amount for which final judgment was entered in the

case, as shown by a copy of the judgment in evidence. He further testifies that after the settlement of that suit the parties against whom he had thus obtained judgment continued for two years to manufacture and sell revolving racks, and that they paid him
46 five dollars as royalty upon each rack so sold.

Mr. Imhaus testifies that when he was in the employ of respondent the price asked for the revolving racks when he sold them was ten dollars each; that when he entered the employ of respondent in March, 1879, the list price of the latter for these racks was reduced to ten dollars, having been prior to that time a higher figure. His testimony in this regard is not disputed.

The average profit of respondent upon each of the two hundred and ninety-four revolving racks sold by him as aforesaid is, therefore, concluded to have been four dollars, making his total profits upon said racks eleven hundred and seventy-six dollars. It is manifest from the evidence that that sum does not fairly represent respondent's entire profits upon his unlawful sales of these
47 racks, but it devolves upon complainant to prove the amount to which he is entitled by reason of respondent's infringement, and no more than the amount named has been proved.

The master feels compelled to particularly direct the attention of the court not only to the facts above referred to relating to the falsification of entries in respondent's books of account, but also to the character of the testimony which he has given upon the reference.

I therefore find and do report that the number of revolving cue racks sold by respondent in infringement upon and violation of complainant's rights under the letters patent sued on herein is two hundred and ninety-four; that the gains and profits received by respondent upon the sale of said racks amount to eleven hundred and seventy-six dollars, and that no damages sustained by
48 complainant by reason of respondent's sales of said cue racks over and above the amount of respondent's profits above set forth has been proven.

Accompanying this report and forming part thereof are the testimony introduced upon the reference and the several exhibits introduced in connection with said testimony, and also a list of revolving cue racks sold by respondent, as shown by his order books, according to the conclusion of the master upon his examination of said order books, in conjunction with other books of respondent.

Respectfully submitted,

S. C. HOUGHTON,
Master in Chancery.

49 *Testimony, with Exhibits Appended.*

U. S. Circuit Court, District of California.

EMANUEL BRUNSWICK
v.
FERDINAND DE ST. GERMAIN.

Reference for accounting.

Testimony for Complainant.

St. Germain	2, 27, 32
Heney	14
Knorp	17
Mell	20
Blair	22
Hatch	24
Brunswick	35, 83

Re-examined:

Imhaus	42
Liesenfeld	78
O'Neil	79

For Respondent.

Dreypolcher	56, 76
Fields	62, 78
Eckhardt	65, 75
St. Germain	72
Felle	72
Liesenfeld	73

50 In the Circuit Court of the United States for the Ninth Circuit, District of California.

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN.

Reference for accounting.

WEDNESDAY, *June 25th*, 1884.

This day was set, at the request of the complainant, for hearing testimony in this matter.

Continued, by agreement of counsel, to Wednesday, July 3d, at eleven o'clock a. m.

WEDNESDAY, *July 3d*, 1884.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Further continued, by agreement of counsel, to Thursday,
51 10th instant, at 11 o'clock a. m., at which time respondent agrees to furnish a statement of all revolving cue racks sold by him.

THURSDAY, *July 10th*, 1884.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Respondent, not being prepared to furnish a statement of the revolving cue racks sold by him, asked for a further continuance, and by agreement of counsel the examination is further continued to Tuesday, 22d instant, at 11 o'clock a. m.

TUESDAY, *July 22d*, 1884.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Examination-in-Chief of Ferdinand de St. Germain on Behalf of Complainant.

52 By Mr. BOONE:

Q. 1. Have you prepared from your books any statement showing the number of revolving cue racks manufactured and sold by you or by your house?

A. There is really no statement to be prepared, because we do not keep any stock account. I am ready to answer any questions, but I have prepared no statement.

Q. 2. This examination was postponed some two or three weeks ago on a promise from Mr. Eckhardt, from your house, that such a statement would be produced, and some week or ten days ago another continuance was granted for the purpose of allowing you to complete such a statement. Now, you say that no such statement has been made—cannot be done.

A. It cannot be done; I have attempted to make such a statement. We have looked through our books carefully, but it is not put down when we sold cue racks of that kind. Of course, a cue
53 rack is sold with each table, and there is no special kind designated in the books. We don't keep an account of what our workmen are doing. We keep no workshop account at all. We only know what work is done in our workshop when the work is finished. We keep no account of it at all; that is the way we run our establishment. We have sales books, cash books, account books; we have no books showing the work done by us; never kept any, never. I have no partner to whom I have to account for anything. I have always been the sole proprietor, and I owe no accounts to any one. I believe my books are now down-stairs. I will produce them all. All the revolving cue racks that I sold were made outside of my shop by one person and another. I don't get them all made from the same man. When I want any I go and get some.

We have had some made by a man of the name of Hatch, on
54 Mission street. I do not know the number. I do not know between what streets. He is a scroll sawyer and turner, and one thing and another. His place is on the lower part of Mission street; near what other street I cannot tell you; I don't go there myself. It is between the water front and Second street, I think. It is easy to find out from the directory. I don't know his first name. Previously some were made for me by a man named Knorp, who was at the Mechanics' Mill. These are all the persons who manufactured them for me. Nobody else made any revolving cue racks for me. The first ones I bought were from Brunswick, Chicago. There have been very few of them made for me, of course. No one has made them for me except these two parties. We have not made them in our own shop; we cannot make them because we have not got the apparatus. They are turned, and we have not any apparatus for turning in our shop. I swear that I never had any revolving
55 cue racks except those that those parties named made, made for me, except what I bought from Brunswick, Chicago. I have some bills from those parties. We settled them every month upon a memorandum of what work had been done. I have not attempted to get from either of those parties any memorandum of the number of revolving cue racks made for us. I have made no inquiry whatever. How could they know? They made all kinds of racks; they made wall racks; they made standing racks, and they made revolving racks. I have not lately had any interview with either of those parties; not precisely for that. I see them occasionally. When I saw them last I had no talk with them about those cue racks. I have had talk with them about these cue racks since the decree was filed in this suit; that was some time since. I told them I would not buy any more of them. One of them
56 said he did not care; he was making them anyway for Jungblut and Leisenfeld. Everybody makes them; it is an open secret. Everybody sells them in this town. They rendered me bills monthly. Those bills are at home. I suppose I have them. If I can find them I will produce them. I have not purchased any revolving cue racks since the decree in this case that I know of; I don't believe I have; on the contrary, I told them I would not buy any more of them. I have not purchased any since the decree was filed in this case. I had some on hand which I have disposed of, one or two; and one or two second-hand, which I have got yet. One is broken and the other has been repaired and fixed up. I don't remember how the last revolving cue rack was sold. I saw it was gone, and it was gone with a table. I have sold no revolving cue rack since the decree in this case, nor have I bought any. Of that I am positive.
57 I have no memorandums or records whatever by which I can determine how many revolving cue racks I have sold within the last ten years. I have no record whatever showing the character of cue rack which is furnished with any billiard table which I have sold. I have no memorandum whatever showing what kind of cue racks are ordered by persons purchasing billiard tables from me. What is called for is a billiard table complete with all fixtures,

and that includes everything. It is not always left—entirely left—to our discretion to furnish any kind of a cue rack which we desire to. We gave them the choice of whatever kind of cue rack they wanted. The arrangement as to that was made verbally. A memorandum was made at the time of that verbal arrangement. That memorandum is with the order which is in these books which
58 is now before me. Occasionally there are some memorandums of the kind of cue racks they wanted. I cannot tell from the entries in these books what kind of cue rack was furnished with a billiard table, except when it is a special case. If a pivot cue rack or a revolving cue rack is specially called for I might put it down. There are some cases where it was entered that a revolving cue rack was wanted. I find entries in these books wherein the character of the cue rack furnished is mentioned. I will make a list of those revolving cue racks mentioned in the books. I cannot furnish a memorandum of the number of billiard tables which have been sold by me in the last ten years, and if I could I would not; but I cannot. It is nobody's business. These books which I have now before me would probably show all the billiard tables which I have sold within the last ten years; I don't know.
59 With every billiard table we sold a cue rack. We got our wall cue racks from the same people who made the others. I have no memorandum of the number of wall cue racks that I have had made; it is not necessary. When I am out of them I order some; that is all. These nine books before me contain entries of my transactions from the beginning of my advent in the house until now. None of these are the books that I am now using in my business. The last one runs up to May 8th, 1884; but we need these books every day in our business. I will go through those books which show my sales and make a list of all revolving cue racks which appear on those books.

Cross-examination of FERDINAND DE ST. GERMAIN by Mr. WHEATON:

Q. 1. Did you have any revolving cue racks manufactured before the last lot that you purchased from Brunswick Brothers, Stephany, Hart and Company?
60 A. One or two, or two or three. Those cue racks did not suit. I have got one of them now that was made in 1868. I have before me a bill from Stephany, Hart and Co., dated February 6th, 1877, for twelve revolving cue racks. I purchased these cue racks from them at the time. I have here also a bill of August 25th, 1875, from Brunswick's house, showing these revolving cue racks which I bought at that time. I have here also another bill of August 25th, 1876, for twelve cue racks, which were sold to me at that time by Brunswick Brothers, Stephany, Hart and Co. Emanuel Brunswick, the complainant in this suit, was a member of that firm at that time and one of the parties who sold those racks to me. Since February 6, 1877, I have probably sold altogether five or six or seven dozen revolving cue racks. I could not say exactly, as I have no record of them. At most, I should esti-

mate that I have sold five or six dozen, all told, including
61 those that I bought from Brunswick Brothers, Stephany, Hart and Co.—say seven dozen, all told. I calculate that there are about 102 revolving cue racks that we have sold and given away and otherwise disposed of, including those bought of Brunswick Brothers, Stephany, Hart and Co. I arrive at that conclusion more by guess-work and recollection than in any other way, because there are not that number entered in the books. Coming to think and reflect over it, I place it at about that. Those are all given away, in fact, with the tables. That was what I meant by giving away—furnishing them with the tables. I believe I have bought three or four more revolving cue racks from Brunswick Brothers, Chicago. Those are all that I bought from those people East.

Re-examination of FERDINAND DE ST. GERMAIN by Mr. BOONE:

Q. 1. You have sold about the same number of revolving
62 cue racks each year since 1875, have you not?

A. No; it is altogether different; there is no rule for that. I don't know whether the sales for every year increased or decreased since then; there is no rule as to that; there is no fact about it, either. A man might want one or want the other kind and no one might order one of them for six months. I can't tell whether I sold more or less during the last year than I sold in 1876; it is subject to fluctuations, like everything else. I suppose that by going through my books I could see the number of billiard tables that I have sold. I ought to be able to, if it is in the books. I can do so.

Q. 2. Will you do so?

(Mr. WHEATON to the witness: No; I would not do it.)

A. No.

By Mr. BOONE:

Q. 3. Do you refuse to produce a statement of the number of billiard tables which you have sold since the date of
63 complainant's patent?

Mr. WHEATON: Certainly he does. I will answer for him.

Mr. BOONE: We demand the statement of the number of billiard tables sold in order that we may find out how many straight cue racks and how many revolving cue racks respondent has sold.

Q. 4. What proportion of the number of cue racks that you have sold have been revolving cue racks?

A. I have never figured out. I could estimate it. I said awhile ago that I suppose I have sold or given away or otherwise disposed of about 100 or 102 revolving cue racks since I started. That includes those that I purchased from those parties East. When I heard that there was a patent and that there was likely to be some trouble, I did all I could to keep people from taking them; besides they are unsafe. The brackets get loose on the wall, the pin gets off from the upper bracket, and down it comes breaking the
64 bracket and dropping the cue and everything; so I have al-

ways recommended them as dangerous. That is the recommendation I have given them—always have. That is why I did not get any more from those parties East.

By Mr. WHEATON:

Q. Did you make anything by furnishing these revolving cue racks instead of furnishing the wall racks?

A. They cost no more than the wall racks, and, of course, I gave them in the place of the others, charging the same price for the table and the whole outfit.

Continued, by agreement of counsel, to Tuesday, 29th instant, at 11 o'clock a. m.

TUESDAY, *July 29th*, 1884.

Present: Mr. Roberts, representing Mr. Wheaton, respondent's solicitor.

Upon the statement of Mr. Roberts that respondent St. Germain was ill and unable to attend, and that the complainant's so-
65 licitor had consented that the examination be continued, the examination was further continued to Friday, August 8th, 1884, at 11 o'clock a. m.

FRIDAY, *August 8th*, 1884.

Respondent and witnesses appeared at the time appointed, but, no counsel being present, the examination was continued to to-morrow, 9th instant, at 11 o'clock a. m.

SATURDAY, *August 9th*, 1884.

Present: Mr. Boone, complainant's solicitor; Mr. Roberts representing Mr. Wheaton, solicitor for the respondent.

Respondent St. Germain being absent from the city, a further continuance is taken, by consent, till Tuesday, 12th instant, at 11 o'clock a. m.

TUESDAY, *August 12th*, 1884.

Present: Mr. Wheaton, respondent's solicitor.

66 On account of the absence from the city of Mr. Boone, the examination was further continued, at the request of Mr. Wheaton, till Tuesday, 19th instant, at 11 o'clock a. m.

TUESDAY, *August 19th*, 1884.

Present: Mr. Boone, complainant's solicitor; Mr. Wheaton, respondent's solicitor.

Re-examination of FERDINAND DE ST. GERMAIN on behalf of the complainant by Mr. BOONE:

Q. 1. Have you prepared a statement, as proposed, of the number of revolving cue racks made or purchased and sold by you since you have been in business here?

A. I have, and I now produce it. Upon that statement appears all that I can find.

(The statement above referred to is introduced in evidence and marked "Exhibit A Accounting.")

67 I made that statement from the books, whatever I had put down. We don't generally put down what kind of racks are sold, as I said before, but in some cases we did. That statement represents the racks sold and it represents all the revolving cue racks purchased by me, except the 30 or 36 or 40 that I bought from Chicago; those are not included in that statement. To the best of my knowledge this statement, Exhibit A, accounts for all the revolving cue racks purchased or made by me, exclusive of those which I purchased from Brunswick Brothers, Stephany Hart and Co. We never made these billiard-cue racks in our house. As I said before, they were made for us by James Hatch and A. F. Knorp. Nobody else made them for us as a business. I gave samples once or twice to others to find out what they would make them for and they made one or two as samples, and that was the end of it.

68 There was a man named Melle and a man named Heney who made them that way; these were all. They made one or two; that was all. No one else made any revolving cue racks for me at all. I cannot remember that any one else did. I know a man by the name of Brehm, whose place is at 221 Mission street; he made no revolving cue racks for me, but made the other kind. I know a man by the name of James C. Blair; he did not make any revolving cue racks for me that I know of. As I have told you, I did not keep a stock account and I cannot say how many Hatch made for me for sure; it is impossible to tell. Bills were rendered me for those, but they were paid when due, and they were all destroyed. I have not made any attempt from those parties to learn how many revolving cue racks they made for me; I have not seen them.

69 Recross-examination of FERDINAND DE ST. GERMAIN by Mr. WHEATON:

Q. 1. When you state that Knorp and Hatch made those revolving cue racks, please state what you mean by that?

A. They made them; they did not put them together; they did the turning and furnishing the material—that is, the wood part—and we had to do the fitting and furnishing, boring, stamping, furnishing the iron part of it—the pivots. These men furnished the brackets; they furnished the wooden part complete, but all in a heap; nothing fitted or in shape at all. One could not have told what they were when they were delivered to us. Exhibit A shows a list of revolving cue racks that I have sold, as shown by my books. It does not include the cue racks that I bought from Brunswick Brothers, Stephany, Hart and Co.

By Mr. BOONE:

70 Q. Have you now on hand any revolving cue racks?

A. I have a few old ones. I have no new ones. I have disposed of all my stock of them. I have not had any for a long

time. I have had some of them made this year. I cannot say how many. Some that we had I returned. I have disposed of all that I had, and don't want any more. Independent of what is shown in the account, Exhibit A, I have no means of ascertaining as to any other revolving cue racks that I have sold. I do not see how I could tell.

Continued, by agreement of counsel, subject to notice.

THURSDAY, *October 9th*, 1884.

Present: Mr. Boone, complainant's solicitor; Mr. Wheaton, respondent's solicitor.

Mr. Boone agrees that all the witnesses examined to-day will be produced by him for cross-examination, if desired by re-
71 spondent, after the return of the respondent's manager, Mr. Eckhardt, who is absent from the city.

Examination-in-chief of WILLIAM HENEY on behalf of complainant by Mr. BOONE:

Q. 1. What is your business?

A. Wood and ivory turner. I am not in business now; I am working for Knorp. I worked for him about a little over a year, I think. Before I went to Mr. Knorp I was in business at 109 Mission street—the same business—doing business for myself. I know the defendant, Mr. St. Germain. I have done work for him. I have done turning for him for revolving cue racks. We contracted for the work. I could not exactly tell how many revolving cue racks I manufactured for Mr. St. Germain. I have a record of 24; probably there might be fifty or a hundred. I can't
72 recollect; it was a long time ago. To the best of my recollection, I must have been making them for him from 1869 up to 1879. We made a lot of different cue racks there at that time. My books will not show. I have not got my books. I have been manufacturing revolving cue racks of different kinds since 1867 or 1868. They were not hanging cue racks, but they were revolving. I made them for Strahle and Company. I think I made them also for Leisenfeld. The book now before me is the book that I kept in my business, in which there is entered the account of Jacob Strahle and Co., extending from January 2d, 1875, to December 23d, 1875. I find from this account that during that time I made twenty-four revolving cue racks for Jacob Strahle and Co. The entries of those appear on pages 12 and 13, and which are as follows: "1875, October 23, 1 dozen cue racks, $96; December 23, 12 cue racks, $96.00."
73 The way I know that revolving cue racks are referred to is that St. Germain got me to make revolving cue racks by the dozen for him. I think it was in 1879 that I went out of business, as near as that I can come to it. My books for the years from 1876 to 1879 have been destroyed. I tore them up to make waste books of. I could not tell from memory how many revolving cue racks I made for Mr. St. Germain during the year 1876. I should suppose that I made from fifty to a hundred of those cue racks for Mr. St.

Germain all together. To state the number that I made for him, as nearly as I can recollect, I think I made—well, I will say fifty. I would not swear to more than twenty-four, but I think I made between fifty and a hundred. Twenty-four is all that I can swear to. As I have stated, to the best of my recollection and belief, I made from fifty to a hundred for him all together, but I
74 would not put it outside of fifty, and I would not swear that I made fifty for him, but I think I did. There is no record anywhere of the other revolving cue racks that I made for him. For making those cue racks Mr. St. Germain paid me $96 a dozen. When I delivered them to him they were in an open condition. I only furnished the work; he put them together and finished them and stained them himself.

Cross-examination of WILLIAM HENEY by Mr. WHEATON:

Q. 1. In your book before you it is not stated whether or not the cue racks that you have referred to were revolving cue racks.

A. No, it don't show that, but I know they were. I know I never made a dozen of cue racks for him at one time, except revolving cue racks. I made other revolving cue racks for him that were
75 not hung. They revolved on pivots, the same as others, but they were not attached to the wall; they stood on a pedestal that went on the floor. I don't know how many of those that I made for Mr. St. Germain; but I have been making them ever since 1869. I think up to the time that I went out of business. I generally used to charge them by the hour for the amount of work that I put on them. I don't know what price they amounted to, but I think they amounted to about six or seven dollars apiece. I ain't positive about this swearing business. I know that I made twenty-four of these revolving cue racks, because I have the record here to show it; but I think I made from fifty to a hundred of them, to the best of my knowledge and belief and recollection. I can positively swear and be certain that I made more of the revolving cue racks for him than that twenty-four. I can't tell anything about
76 any other year, except 1865, when I made revolving cue racks for Mr. St. Germain. It is a long time ago. Probably I made some the year before that for him—made a few for him. I had done pretty — all of Mr. St. Germain's work up to 1879—that is, the greater portion of it.

By Mr. BOONE:

Q. Do you include in this twenty-four any of those cue racks that were on pedestals?

A. No, sir.

Examination-in-chief of A. F. KNORP on behalf of complainant by Mr. BOONE:

Q. 1. State your business and whether or not you have done any work for Mr. St. Germain, the defendant in this case.

A. I am in the wood-working business at present, at 120 and 122

Main street. I have been in that business in San Francisco
77 since the spring of 1874. I know Mr. St. Germain and have done work for him. I made revolving billiard-cue racks for him. I can't tell from memory how many; I can tell from my books. I have examined my books at the request of Mr. Brunswick and furnished him with a statement of the number of cue racks I made for Mr. St. Germain, and at the request of Mr. Eckhardt I furnished Mr. St. Germain with a copy of that list. The paper before me is a statement that I furnished Mr. Brunswick or the Brunswick and Balke Company and of which I gave a copy to Mr. St. Germain through Mr. Eckhardt. I made this list out myself from my books and it is correct.

(The statement above referred to is introduced in evidence by complainant and marked Complainant's Exhibit Knorp Accounting.)

78 Objected to as not the best evidence; that the books themselves should be produced.

I made out that statement from an examination of my books which I made myself. The statement contains an exact copy of the entries as they appeared in my books, in connection with those charges. Those entries are just as they appear in the books. That list comprises all the revolving cue racks that I made for Jacob Strahle and Company — St. Germain.

Cross-examination of A. F. KNORP by Mr. WHEATON:

Q. 1. What is represented by the figures in the last column of Exhibit Knorp?

A. The amount I charged for them; the amount varies. At first I got a few dollars more per dozen than I used to afterwards. When I delivered them to Mr. St. Germain, these cue racks were in the usual condition—the lumber turned, bored, and ready to
79 put together. Mr. St. Germain's man used to put them together, stain them, varnish them, and polish them; finish them whatever way they wanted to. I furnished the material ready to be put together; what is called in a knock-down state; that is the technical term for it. I made all of those to order except the last dozen. I happened to take the notion at one time—I thought that Mr. St. Germain would want a dozen or two—and I took the notion to make a dozen, and I kept them on hand for about six months, when I offered them to him for his own price, which was $66, where we used to get $78. I was glad to get rid of them at that price. I made no revolving cue racks for anybody else excepting Mr. St. Germain. You can see from my exhibit that I made very few. Other people made them so much cheaper than I could that I could not make them. I made fifty-one altogether for Mr. St. Ger-
80 main from August 15th, 1869, to March 19th, 1883.

Examination-in-chief of JACOB MELL, on behalf of complainant, by Mr. BOONE:

Q. 1. State your business, and what work, if any, you have done for the respondent, Mr. St. Germain.

A. I am a wood-turner, at 132 Mission street, in this city. I have been in the business about twenty-five years. I know Mr. St. Germain and have sometimes done work for him. I have made revolving cue racks for him. I never carried on much of a business and hardly ever kept books, but I know by recollection exactly how — made for him. What I know for certain is two dozen. I always made them by the dozen. It might be that I made three dozen, but I could not swear to it, but I am sure about two. The first
81 dozen I made about the time that O'Neill left and went to work for Brunswick. That was two or three years ago; something like that. Then I made another dozen soon after. I think it was perhaps two or three months after. They were delivered to him just turned and bored, and in such a condition just to put them together. Mr. St. Germain varnished them and put them up himself. I believe I had nothing to do at the time, and I believe I asked him to let me make them, and I believe I made them for fifty-four dollars a dozen out of maple.

Cross-examination of JACOB MELL by Mr. WHEATON:

Q. 1. Did you say you did not keep books during the time you were making these revolving cue racks?

A. I did not keep books. I have also made column cue racks for Mr. St. Germain. There was turning work about these.
82 The revolving cue racks were on a pivot and hung up on the wall, and there are some turnings on each side. I made those revolving cue racks by contract by the dozen. I always tried to get the most I could for making those revolving cue racks. There was no exact price about it. I got from him, I believe, either forty-eight dollars or fifty-four dollars a dozen. I delivered one dozen at a time. I would start in and make one dozen at a time. I never delivered to him as many as one dozen revolving cue racks at a time. I have not delivered to him over three of those at a time. The way I remember that there were two dozen was because I was making so few of them that I did not care to do them except I was out of other work. I made just those two dozen, and I would not make any more because it did not pay to make them. The other
83 kinds, sometimes we made them two at a time or three or a half dozen—black walnut and all kinds. He had lots of the column cue racks made of that other kind. I sometimes made as much as —, I think. I recollect a lot as much as fifty at a time. I might have made some revolving cue racks that worked upon a pedestal that were not made to hang against the wall for Mr. St. Germain—perhaps a couple of pieces, two or three pieces. If I did I do not remember. These two dozen that I speak of were not made to stand on pedestals; they were made to revolve. They might have been used so far as I know in any shape or manner, but I made them to revolve. The reason why I know these were made to hang to the walls was because of these pivots that were put in there on the top and bottom. If they used them on pedestals they would have
84 to take them out likely, if they did not want them to revolve. Some little iron fixings were put into the ends for them to

revolve on. I put those irons in—that is, I furnished them, but they put them in themselves. I furnished the irons. I got them cast, I think. I think they were cast by a man on Main street. The irons were flat pieces with a projection in the middle, and there was a socket for the projection to go into.

Examination-in-chief of JAMES C. BLAIR on behalf of complainant by Mr. BOONE:

Q. 1. State your business, and whether or not you ever did any work for Mr. St. Germain, the respondent in this case?

A. I am in the brush business now. I used to be a wood and ivory turner on Main street between Mission and Howard. I
85 was in that business in this city about two years. I went out of it about three years ago. I know Mr. St. Germain, and I have done work for him. I have made revolving cue racks for him. I did not keep books when I was in business. I have no means whatever of telling how many revolving cue racks I made for him while I was in business. It would be very difficult for me to tell from memory how many I made for him. It is now over three years since I quit the business. I made a small number for him. I would not be willing to swear to any number whatever that I made for him. I would not swear to any number whatever. I might swear to a dozen, and it might be too much and it might not be the amount. I would not swear positively to any number. I did make some for him. I have no means at all of finding
86 out the number. I destroyed what small records I had of my business after closing up with Mr. St. Germain. I kept a small book of the accounts that were due me; and since the moneys were all collected I destroyed the book. I did work from a year to a year and a half for Mr. St. Germain. It might possibly be that I took a contract from him to make revolving cue racks two different times. He would sometimes give me an order for three, sometimes six, revolving cue racks. He gave me orders to make them two or three different times during that year and a half. I do not recollect the price he paid me for them. I did not put them together for him.

By the MASTER:

Q. Do you know that Mr. St. Germain did give you an order for three revolving cue racks at one time?

A. Yes, sir; the reason I have that in memory is, I think,
87 they were black walnut instead of maple. I made them and delivered them to him. At another time he gave me an order for six revolving cue racks. I made and delivered those to him. I have no positive recollection of having made and delivered any others to him.

Examination-in-chief of JAMES HATCH on behalf of the complainant:

Mr. BOONE:

Q. 1. State your business and whether or not you ever did any work for Mr. St. Germain.

A. I am in the mill business at present; before that I was in the liquor business; before that I was in the mill business, and before that in the mill business. There was eight years that I was out of the mill business, and then I was in the mill business again. I know Mr. St. Germain; I have made revolving cue racks for
88 him inside of two years in this city, more or less. My mill business embraced scroll sawing, making furniture, and all that kind of thing. Sometimes I kept books in my business and sometimes I did not. I have only been in the business with a partner since the first of the year, and before that I kept little memorandums and destroyed them when I got my money on them. To the best of my recollection, I think I made somewhere in the neighborhood of five dozen revolving cue racks for Mr. St. Germain in the last year and a half or two years. We have only been in that business two years and a half and I did not get acquainted with the cue-rack business until long after that. He paid me five and a quarter dollars apiece and five and a half dollars for others, according to the material. I delivered the last lot to him several months ago, but this year I made one dozen out of this lot for Mr. Youngblut.
89 They was not all delivered to Mr. St. Germain; those were made on Mr. Youngblut's order. If I made somewhere in the neighborhood of five dozen, of course, Mr. St. Germain must have got somewhere in the neighborhood of four dozen. I do not know that I have made revolving cue racks for any one else beside Mr. St. Germain and Mr. Yungblut. I don't think so. I believe that is about all Mr. Yungblut got. I did not take an order from Mr. Yungblut but once.

By the Master:

Q. How many revolving cue racks can you swear that you made for and delivered to Mr. St. Germain?

A. I cannot swear positively that I made over five dozen for Mr. St. Germain and Mr. Yungblut; somewhere in that neighborhood. I can swear positively that I delivered to Mr. St. Germain four dozen revolving cue racks.

90 Continued, by agreement of counsel, to Monday, November 3d, 1884, at two o'clock p. m., it being agreed that the witnesses examined to-day shall be produced at that time for further cross-examination, if desired.

MONDAY, *November* 3, 1884.

Further continued, by agreement of counsel, to Saturday, 8th instant, at two o'clock p. m.

SATURDAY, *November* 8, 1884.

Further continued, by agreement of counsel, to Tuesday, 11th instant, at two o'clock p. m.

TUESDAY, *November* 11, 1884.

Further continued, by agreement of counsel, to Tuesday, 18th instant, at two o'clock p. m.

TUESDAY, *November* 18, 1884.

Further continued, by agreement of counsel, to Tuesday, 25th instant, at two o'clock p. m.

TUESDAY, *November* 25, 1884.

91 Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Further continued, by agreement of counsel, to Monday, December 1st, at two o'clock p. m.

MONDAY, *December* 1, 1884.

Further continued, at the instance of the master, to to-morrow, 2d instant, at two o'clock p. m.

TUESDAY, *December* 2, 1884.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

On account of the non-attendance of respondent and Mr. Eckert, who were notified to appear at this time, a further continuance is taken, by agreement of counsel, to to-morrow, 3d instant, at two o'clock p. m.

WEDNESDAY, *December* 3, 1884.

Present: Mr. Wheaton, of counsel for respondent.

92 Examination of FERDINAND DE ST. GERMAIN by the MASTER:

Q. 1. Have you in your business any other books than these ten order books, now before us, in which the entries contained in these order books or any of them are entered item by item?

A. Yes, sir; in which some of these entries are entered. Sometimes, when cash was paid for the goods, the entries were not posted in our other books. We do not keep books in double entry, and the books that contain such entries are what we call our ledgers. I will produce them.

Q. 2. Do these ten order books referred to contain true and exact entries of the transactions which they purport to record; are the entries which they contain entirely correct?

A. 3. I would not swear to that; three-fourths of these entries are not in my handwriting.

93 Q. So far as you know, are those entries entirely correct?

A. Those in my handwriting are.

Q. 4. Have any changes or alterations whatever been made upon those order books, or any of them, at any time since the entries were first made, to your knowledge?

A. No, sir; not to my knowledge. Changes may have been made at the time of the sale. We may have sometimes made changes, putting in a different kind of goods of a certain kind, for instance, which were a little cheaper, to make it more profitable.

Examination of LOUIS H. ECKHARDT by the MASTER:

Q. 1. You are, I believe, manager of the business of respondent?

A. I am.

Q. 2. So far as you know, are all the entries in all of these ten order books, now before you, correct, and as they were originally entered?

A. So far as I know, they are.

94 Q. 3. Have any alterations or changes been made in any of those entries since they were first made, to your knowledge?

A. Yes, sir; there might have been changes made in this way, that after an entry a change was made in the order, and changes were made there after that.

Q. 4. To your knowledge, have any changes been made in any of those entries referred to after the order has been completely filled in any case?

A. Yes, sir; I know of cases where I ascertained that they were a different kind of goods, and changes were made.

Q. 5. When were such changes made, how long after the making of the original entry?

A. Some time after—sometimes.

Q. 6. How recently do you know of any changes having been made in entries on any of the order books containing entries, running back as far as 1882, or before that year?

95 A. There were some changes made here some time ago.

Q. 7. About how long ago?

A. Perhaps five or six months ago, when it was ascertained that parties had different kind of goods and fixtures.

Q. 8. With respect to what goods were those changes made?

A. Cue racks.

Q. 9. Do I understand you, then, to say that within about six months past changes have been made on these order books of entries of cue racks dating as far back as 1882 or before that year?

A. I could not tell the particular book, but they were pointed out to me; some of them.

Q. 10. Who made those changes to which you refer?

A. A man named Learned that we had in our employ made some.

Q. 11. Who else made such changes, if anybody?

A. I don't know. I was away part of the time.

96 Q. 12. Don't you know of anybody else having made any?

A. I think Mr. Laned made some.

Q. 13. Well——

A. I made some.

Q. 14. Look at respondent's order book, now before you, upon the outside front cover of which appear the words and figures "March 26th, 1880, to January 3d, 1881," at the first entry on page 58, and

state whether or not any change has been made in that entry since it was first made to your knowledge.

A. That is not in my handwriting.

Q. 15. (Q. 14 repeated.) I will ask you the same question with reference to the second entry, appearing upon page 63 of the same book.

A. No; I notice it has been blurred and rewritten, but not to my knowledge. I don't know anything about it at all.

Q. 16. Referring to the first entry on page 129 of the same
97 book, has any change been made in that entry, to your knowledge, since it was first made? I simply desire you to state what you know of your own knowledge.

A. It looks as if there was interstices in there, but whether that was made at the time or since I could not swear.

Q. 17. In whose handwriting is that entry and the change?

A. Mine.

Q. 18. Was that change made within six months last past?

A. I don't know positively.

Q. 19. What is your impression as to whether it was or not?

A. That particular entry, I don't know.

Q. 20. What is your present impression as to whether or not that change was made since the entry was originally made and posted?

A. I think it was.

Q. 21. Can't you state positively whether or not you made that change within six months last past?

98 A. If I was directed to do so, I did so.

Q. 22. Who directed you to make the changes that you made?

A. Mr. St. Germain.

Q. 23. The changes that you made in these order books within the last six months, when did he direct you to make them?

A. Within that six months.

Q. 24. Can you tell me approximately how many changes you have made in those ten order books within a year past?

A. I could not.

Q. 25. Have you made a hundred?

A. I don't think I have.

Q. 26. Have you made fifty?

A. I don't think I have made fifty.

Q. 27. Have you made twenty-five?

A. I don't know about that.

Q. 28. Can't you swear positively whether or not you made as many as twenty-five?

A. I could not.

Q. 29. Have you made ten?

A. Yes; I suppose I have made ten.

99 Q. 30. Have you made fifteen?

A. I could not tell you that. I could not approximate at all. As they were pointed out to me and directed to be changed I made the changes on the ground that there were certain articles that were not entered at the time correctly.

Q. 31. Then do you swear positively that you do not at this time

know whether or not you have made more than ten such changes in those entries in all those ten order books within six months last past?

A. I could not positively swear to that.

Q. 32. Do you know of your own knowledge of Mr. St. Germain having directed any one else to make similar changes in those order books?

A. No, sir.

Examination of FERDINAND DE ST. GERMAIN resumed by the MASTER:

100 Q. 5. Have you since this suit was decided directed any one to make any changes in any entries in any of these ten order books before us relating to cue racks?

A. No; the first I knew of it Mr. Learned had made the changes and he said it would do just as well. He asked me if I were sure that I had sent any of these cue racks——

Q. 6. (Q. 5 repeated.)

A. Not positively; nobody.

Q. 7. Did you not direct Mr. Eckert to make any such changes?

A. I might have said, "This one we are not certain about. I think it would be just as well to make it doubtful."

Q. 8. You might have said so; did you say so?

A. That I could not swear positively about.

Q. 9. Do you say that you cannot swear positively that you cannot now say whether or not you ever directed Mr. Eckert, in
101 direct or indirect terms, to make such changes as those which have been referred to?

A. No; I can't say I did positively and directly tell him to make such changes, because I did not see the——

Q. 10 (Interrupting). The question is, Did you either, directly or indirectly, direct Mr. Eckert to make such changes?

A. I did not directly; indirectly I did.

Q. 11. What was the character of your instruction to him?

A. If it were not sure it was not necessary to leave it as it stood.

Q. 12. When did you give him that instruction?

A. I could not say the time.

Q. 13. Within a year last past?

A. No; it must have been before.

Q. 14. Have you given him no such instruction within a year?

A. No, sir.

Q. 15. Have you given no other person any such instruc-
102 tion since the decision in this case was rendered?

A. No, sir.

Q. 16. I wish all of the books that you have in your business in which are entered any of the charges appearing in any of these ten order books referred to. Will you send to me this afternoon all such books that you have?

A. Yes, sir.

Q. 17. What are the blue lines which are drawn across some of

the entries and the waving pencil lines drawn across some of the entries in some of these ten order books referred to?

A. Those are made by the book-keepers to check an order.

Q. 18. At what time are they made, with reference to the time when the entries are made in the books?

A. Sometimes three months, six months, after.

Q. 19. Are they made before the order is filled?

A. No, sir; never.

Q. 20. Not in any case?

103 A. No; except the order is cancelled or void.

(At this point Mr. Boone, complainant's solicitor, enters the room.)

By Mr. BOONE:

Q. 21. Have you what are called billiard-table books and lease books?

A. Yes, sir.

Q. 22. Will you send those to the master this afternoon?

A. Yes, sir; except the last one, which opens towards the latter part of 1883, which we are using all the time.

Continued subject to notice.

FRIDAY, *January* 2, 1885.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

104 Examination-in-chief of EMANUEL BRUNSWICK on behalf of complainant by Mr. BOONE:

Q. 1. You are the complainant in this case?

A. Yes, sir; I am the superintendent—manager—for the Pacific coast of the Brunswick-Balke-Collender Company. I was in the billiard-table business for myself in the East for many years. The cost to manufacture of the revolving cue racks described and claimed in my letters patent sued on in this case is four dollars apiece, finished. That is the cost in Chicago, and here also. I have manufactured them here at a cost of four dollars apiece. I have an established royalty for these cue racks. I used to get five dollars apiece royalty. That was in Chicago and here. That was eight or nine years ago. I furnished them for Mr. Yungblut here, and also to my brother, in Chicago, after the suit between him and myself was settled. I furnished him with the racks,

105 and they paid me five dollars apiece royalty. That was in addition to the cost of the rack. I have never sold them for any less royalty than that. When I sell a revolving cue rack with a table the profit on the cue rack is, in proportion, from five to six dollars. Of course we figure the profit on everything clear through. We figure the cue rack worth so much money, the balls worth so much money, the cues worth so much money, to figure out the profit on the outfit. When we sell a billiard table and furnish an

outfit we figure the price and the profit with each article included. The profit that we make on these cue racks is five dollars apiece.

Cross-examination of EMANUEL BRUNSWICK by Mr. WHEATON:

Q. 1. What percentage of the entire price that you receive
106 for a billiard table is profit?

A. We double our money. A table and outfit that costs us complete about one hundred and twenty-five to one hundred and thirty-five dollars we get for it two hundred and eighty-five to three hundred and fifty dollars, which I can show the bills for. I suppose that the percentage of that which should be allowed for expenses for salesmen and rent of store, in estimating the cost of the table and outfit, is about twenty per cent. Our highest-priced billiard tables without an outfit actually cost us from sixty-five to eighty-five dollars. That is all. A very fancy table, that we sell for from eight hundred to a thousand dollars, may cost about forty dollars more for extra work.

Q. 2. How much have your sales of billiard tables and outfits amounted to for the last year?

107 (Objected to by complainant as immaterial and irrelevant.)

A. I can't tell you. I am just taking stock now. I have not looked it over yet.

Q. 3. About how much do your sales amount to per month?

(The same objection by complainant.)

A. During the year just ended—I won't say positively, but I suppose—our sales have amounted to close onto one hundred thousand dollars.

Q. 4. Have you been able to return to your house in Chicago a profit of four thousand dollars a month, on an average, over and above all expenses?

(The same objections by complainant.)

A. Yes, sir; which our balance-sheet will show. I think there is not quite a clean profit of a thousand dollars a week; I can't
108 tell you exactly. If you wish me to bring up our balance-sheets for each month I will gladly bring them up and show them to you—give you a clean statement.

Since we are in business out here we have not sold any revolving cue racks to anybody on a royalty, because we have wanted to keep them all to ourselves. We did have established in San Francisco a royalty for revolving cue racks. We never gave anybody the right to manufacture them; we charged them the same percentage.

Q. 5. I am talking about royalty. To whom, in San Francisco, did you ever give a right to manufacture and sell revolving cue racks?

A. To no one. No one in San Francisco ever purchased from me a right to manufacture and sell them. I never did any royalty business with regard to revolving cue racks in San Francisco.
109 We sold them for so much profit on them. It has been six or seven years since any one paid me for the privilege of

manufacturing and selling revolving cue racks in Chicago. That was the J. M. Brunswick & Balke Company. I was never a member of that company since 1869. That same company has been manufacturing and selling the revolving cue racks since. The reason why I have not charged them a royalty was because I am interested in that company for the last six or seven years—connected with the company. The suit that was settled at the time they paid me for the right to manufacture and sell revolving cue racks was the same kind of a suit as this suit against St. Germain—a suit for infringement on my cue rack patent. That suit was settled. I got a judgment against them—that is, the patent was allowed to me in court before Judge Blodgett—and without going into more expense they settled the suit and paid me so much damages.

110 Q. 6. Is that what you call the royalty—what they settled for as damages at that time?

A. I suppose so. Sooner than take the testimony on the accounting in that case, we agreed upon a certain amount which should be allowed me as damages. After that I didn't give them no license, but allowed them to make the cue racks. I gave them the right to make the cue racks, the same as a license. There was no writing made out at all. The terms were so much apiece. That company continued to manufacture them under that agreement with me after those damages were agreed upon and paid for two years more. I never had but one case before Judge Blodgett on my revolving cue rack patent. That suit was in Chicago, northern district of Illinois. I think it was in 1876, 1877, or 1878. The papers are on file

111 in this suit. I have made two styles of revolving cue racks. We sell both styles separate from billiard tables sometimes. I cannot tell without reference to my books the name of any person in this neighborhood to whom I have sold a revolving cue rack by itself. My memory is very imperfect, especially with regard to names.

Q. 7. What did the Chicago Company pay you, under that license, for the right to manufacture and sell revolving cue racks which locked up?

A. They gave me a schedule for the amount they had made, and they paid me altogether some four thousand dollars and all expenses of the suit. After the suit was determined, and after they had settled the damages in that suit, there were very few of the cue racks made by them with locks. For the others they paid me five dollars apiece. I don't suppose they made one with locks to

112 a hundred of the others. The price they paid me was five dollars apiece all round, whether the locks were used or not. Before they were paying me a license for the right to use revolving cue racks; at one time they made mostly all revolving cue racks. When the suit was decided against them they made others, because they were so much cheaper, saving five dollars on each cue rack. At first that company was not a corporation; at first it was J. M. Brunswick, Balke & Company, and afterwards it was incorporated as the J. M. Brunswick & Balke Company, and afterwards the Brunswick-Balke-Collender Company.

Q. 8. Can you explain how it is possible that the persons composing these billiard-table companies failed in business so many times as they did when they were making fifty per cent. net in their business?

(Objected to by complainant as irrelevant and immaterial; objection sustained).

113 Q. 9. Do you sell billiard tables and their outfits here for a very much higher price than they have been selling them for in Chicago for years past?

(Objected to by complainant as irrelevant and immaterial; objection overruled.)

A. The same price, in proportion.

Continued, by agreement of counsel, to Monday, 5th instant, at half past nine o'clock a. m.

MONDAY, *January* 5, 1885.

At the hour appointed a telephonic message was received by the master from the office of complainant's counsel to the effect that Mr. Boone was absent from the city, and a continuance was therefore asked for, subject to agreement and notice.

114 SATURDAY, *July 18th*, 1885.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Herein further continued, in conformity with agreement of counsel, to the 24th instant, at two o'clock p. m.

FRIDAY, *July 29th*, 1885.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Examination-in-chief of LOUIS A. IMHAUS on behalf of complainant:

In response to questions of Mr. BOONE the witness testified as follows:

I testified in the main case that I at one time worked for Mr. St. Germain. I worked for him five or six years many years
115 ago; the last was from the 4th of March, 1879, to the 1st of May, 1880—about fourteen months. I was salesman and in fact, everything. I took his place when he was absent; he did not come down until twelve or one o'clock. I was attending to the books, was salesman, and did outside work after he came down, collecting and so forth. While I was at work for him I made many sales of revolving cue racks; you will find the entries, in my own handwriting, in his books yet.

Q. State what effect the fact that Mr. St. Germain sold revolving cue racks had upon his sales of billiard tables.

Mr. WHEATON: That is objected to as incompetent testimony, calling for the opinion of the witness as to what the effect would be, without stating the facts.

Mr. BOONE: State the facts.

116 The WITNESS: At that time, during the time that I was there, the revolving cue racks were all the go—that is, everybody demanded them and wanted them, and orders came from the country, by letter, specifying the revolving cue racks, because they took up less room and they were a novelty. In several private residences in the city I know they were put in because they would fit into a corner, and they would not allow these wall racks to be put up. For instance, Mr. Irving Scott had one put up at his residence, and his brother also. In fact the general order of Mr. St. Germain was that every table should go with revolving cue racks in preference to any others, because they were cheaper.

The competition in the billiard-table business is very close, indeed. It is nearly a cut-throat business now.

Q. Can you state from your own knowledge what a person who desired to purchase a billiard table and demanded a revolving cue rack with it would do if he could not get a revolving cue rack?

117 (Question objected to and withdrawn.)

The WITNESS: The cost of manufacturing a revolving cue rack is about from four to four and a half dollars, I think. I remember seeing some bills when Mr. Knorp made them for Mr. St. Germain. He made them for four dollars and a quarter apiece. Sometimes the price would vary. Mr. Melle made some for four dollars.

Mr. WHEATON: I object to this as incompetent, not the best evidence; that the bills are better evidence.

Mr. BOONE:

Q. Do you know what they cost the Brunswick and Balke Company made up ready for sale?

(Objected to by respondent as irrelevant and immaterial.)

A. Three dollars and seventy-five cents apiece.

118 Q. Do you know how much the Brunswick and Balke Company get apiece for them when they sell them?

(The same objection by respondent.)

A. Eight dollars. When Mr. St. Germain sold them, I believe his list price was ten dollars, when I was there.

(Respondent objected to and moved to strike out the last clause of the testimony of the witness on the ground that if Mr. St. Germain had a list price the list is the best evidence.)

The WITNESS: When I was employed by Mr. St. Germain, ten dollars is what I asked for them when I sold them. While I was employed by Mr. St. Germain these revolving cue racks used to go with the tables as a part of the outfit when the table was sold. In

such cases they did not make a charge for the cue rack. The
119 idea was that the table was sold with the complete outfit. The cost of the table was first calculated and the selling price of each one of those articles was added. I would not call that giving a cue rack away. If a man ordered a different kind of cue rack he had to pay so much extra—that is, if he ordered any kind of an extra cue rack he would be charged the price over and above what an ordinary cue rack costs. For instance, Mr. Scott paid seventy-five dollars for his cue rack, which was made to order.

Cross-examination of LOUIS A. IMHAUS:

In response to questions of Mr. WHEATON, the witness testified, on cross-examination, as follows:

When I say that competition is close in the billiard-table business, I mean that one runs after a customer and the other one runs after
120 him, and deductions are made. For instance, if we ask a man three hundred and fifty dollars for a table, they will offer him one for three hundred, and he comes back and we offer it to him for two hundred and seventy-five, and so on. The profit which is made by the Brunswick and Balke Company here is figured at about one hundred per cent., but that is outside of expenses—that is, not net. For instance, a billiard table that we would sell for three hundred and fifty dollars probably would cost us, laid down here, as I figure, about a hundred and seventy-five dollars—not more; but then, outside of that, we have a good many outside expenses—traveling expenses, saloon expenses, and so forth—that is not included. If I sell you a table to-day we figure the cost of all the articles that go with it, and it averages about one hundred per cent. profit, without calculating city expenses and traveling expenses and saloon expenses or any of those things. One of our billiard tables that sells here for two hundred and eighty-five dollars, the frame of
121 the table will cost, laid down here—I couldn't tell you that exactly now because it depends upon how it is shipped. If we ship it by railroad it will cost twenty-six dollars freight, and from eight to nine dollars if shipped by vessel. The cost in Chicago of a table which sells here, with its outfit, for two hundred and eighty-five dollars is seventy-five to seventy-nine dollars. That is what we call the frame of the table, which comprises the frame and bed and cushion—rails and cushions. It is a complete table ready for using with the exception of the cloth and the outfit. Some cushions cost more than others. The bed cloth on one of those tables will cost about twelve dollars and a half and the cushion cloth three dollars and a half. The tables, including the cloth, all in order, ready to play on, that we sell for three hundred and fifty dollars
122 each cost from a hundred and fifteen to a hundred and twenty dollars. That is the cost to us in Chicago, and to that cost the freight is to be added. The freight is twenty-six, twenty-eight, thirty, and thirty-two dollars by rail, according to the size and weight of the table, and eight, nine, and ten dollars by vessel from New York. When shipped to us from New York they come from

the New York factory of the company. The cost of the tables that come from the New York factory and those that come from the Chicago factory vary sometimes, but not very much. For the cost of the table to us they add to manufacturing expenses about fifteen per cent. That fifteen per cent. is included in these prices that I have already given. They vary something, but it is so little that it don't amount to much.

About the only person that I can recall here who ordered a private revolving cue rack made by Mr. St. Germain is Irving M. Scott. His brother also has one. They were both ordered of the firm
123 of Strahle & Company. Those racks which were made by them hung on brackets on the wall, made to fit in the corner of the room. I don't think it is a fact that Mr. Knorp charged Mr. St. Germain as high as ninety-six dollars a dozen for revolving cue racks. I would not positively say so, but I don't remember any such items as that. I think four dollars and a quarter or four dollars and a half was the price that Knorp sold them to him for. I would not be positive. It is about five years ago. That is my idea of about what they cost. Still, at that time I didn't pay much attention to it There is a great deal of difference in the cost of those revolving cue racks, depending upon the material of which they are made, and also the finish on them. There is a difference between those made of laurel and those made of walnut and those made of maple. I believe those made of laurel cost us here four dollars and a
124 quarter, and some of the others would cost five and a quarter. There would not be more than a dollar's difference. So far as we are concerned, I know that the difference in cost between walnut and laurel is about a dollar.

During the time that I was there with Mr. St. Germain we sold more of the revolving cue racks than of the other kind, because they used to send revolving cue racks if no other style was ordered. Unless it was specified that some other style should be sent, they sent revolving cue racks. I could not positively state as to whether or not there was any month when I was with Mr. St. Germain in which there were more revolving cue racks sent out with tables than there were racks of the other kind, because I never took note as to the month, but on the average, during the year, I think there were more of the revolving cue racks sent out than of the other kind. That was the case during the fourteen months that I
125 was there in 1879 and 1880. Whenever I made any sales I entered the sales in the books, and I would generally enter from the sales book into the lease book. The early part of the time when I was there they used to have a book-keeper there, Mr. Farnsworth. He and I used to make the entries, and afterwards, when he left, I had the control myself of that portion of the business. In fact, we would all make entries. I made my entries, and Mr. St. Germain made his entries in the afternoon when I was out.

In Mr. St. Germain's sales books now before me, containing sales from November 11th, 1878, to March 26th, 1880, there are entries in my handwriting. I find that the revolving cue racks that were sold to Mr. Scott is entered on page 133 as having been sold to D. M.

Scott. The charge was sixty-five dollars. That is the one I referred to. That entry has been altered here. When I made the entry it was "Revolving cue rack," and here that has been rubbed
126 out, and it is marked "Private cue rack." After examination of this book referred to from the first entries to the date March 4th, 1879, I have found three revolving cue racks specified. It says nothing about what kind of cue racks are ordered. It says generally "Billiard table and outfit."

(Adjourned, in conformity with agreement of counsel, to the 30th instant, at one o'clock p. m.)

THURSDAY, *July 30th*, 1885.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Re-examination of LOUIS A. IMHAUS on behalf of complainant:

In response to questions of Mr. BOONE, the witness further testified on re-examination as follows:

In my cross-examination I stated that the manufacturing
127 price of these cue racks differed at different times. There was no difference in the selling price of Mr. St. Germain; if the cost was more, he did not charge any more. At that time the price-list was ten dollars. Prior to that it was a higher price-list, but they were reduced when I came there to ten dollars. My recollection is that before that reduction the selling price was either twelve or fourteen dollars—I don't remember which—and we made a deduction then to make them ten dollars.

Recross-examination:

In response to questions of Mr. WHEATON, the witness further testified on recross-examination as follows:

The reason of reducing the price of the revolving cue racks was because some others were making them and selling them, and when I started with Mr. St. Germain we made a new price-list and put down every thing, billiard tables and everything. Tables that were sold before for four hundred and fifty dollars were reduced to four hundred and twenty-five dollars, and so on, and a paper that had been started before, and the publication of which had been suspended, was started again when I went there.
128 I don't know how many billiard-houses have been selling revolving cue racks since 1879 and up to last January, when the patent expired. I don't know anything at all about other houses having sold them. I don't know whether they are making them or selling them; that I can't tell anything about. I don't know whether or not Liesenfeld has been selling them; I couldn't say positively. I don't know whether he is making or selling them now at all. I don't know, of my own knowledge, whether he was selling them between 1879 and last January. I could not say

whether or not Jungblut sold them within that period, because I have not seen any of his manufacture in any place. I couldn't tell you whether Mr. St. Germain is making any at the present time.

Q. Do you know why the relative sales of revolving cue racks, as compared with the ordinary wall cue racks, fell off so largely after 1879 and 1880 in San Francisco?

(Objected to by complainant as irrelevant and immaterial.)

129 A. I don't. I don't know that the sales did fall off; we sold about as many of the revolving cue racks as we did of others; we have several new patents. I think that in the year 1884 one-half of the cue racks which our firm sold were revolving racks.

Q. Don't you know that not one-quarter of the cue racks sold by your firm in 1884 were revolving cue racks?

(Objected to by complainant as irrelevant, immaterial, incompetent, and not cross-examination.)

A. I know, I think, that one-half of them were revolving cue racks; we don't put down in the books a statement of the kind of cue racks sold, whether revolving or wall racks. Our firm gets all our goods from our firm East.

Q. Have you no documents that will show what proportion of the cue racks your firm has sold during the last year were revolving cue racks and what proportion of the other kind?

(Objected to by complainant as irrelevant, incompetent, and immaterial.)

130 A. No; we cannot tell by the cost of them as they appear on the bills because some of the other cue racks cost the same; we can't tell from the prices they are sold at because they go with the billiard tables. It is very seldom that we sell a cue rack by itself; in selling them with the billiard tables there is no way of telling what kind of a rack is sold; they are sold as a part of the outfit; the prices are the same, whether the ordinary cue rack is furnished with the table or a revolving cue rack; if we sell an East Lake wall rack that costs three dollars and seventy-five cents, and a revolving cue rack that costs the same, the profit is the same, of course.

As to whether or not our firm made a profit in selling revolving cue racks over selling the other kind, that depends entirely upon the kind; if we sell a higher price rack, an Exposition rack, for instance, they are sold at a different price from the plain rack. I am speaking of the plain racks of both kinds. I don't know what the racks cost the factory East. I don't know what royalty they pay. I know what all the plain racks of both kinds cost us—three
131 dollars and seventy-five cents to four dollars apiece. They will bill so many cue racks so much money; but I couldn't tell from the bills whether they were revolving racks or the other kind. I could tell, of course, when the racks came what kind they were. Even the bills sent to us from the East would not tell us what kind of cue racks we are to get; they called for so many cue racks at so

much. The only way that we make a difference is by calling one ash and one walnut, or something like that; there is a difference of twenty-five or fifty cents each on those made of different kinds of wood.

(In response to a question by the master, the witness answered:)

I could, by taking Mr. St. Germain's books, tell how many revolving cue racks were sold by Mr. St. Germain during the time I was in his employ. The books that I refer to are the order books and the lease books. To my recollection, they were placed on the lease books, in each case, what kind of cue racks it was.

(In response to questions of Mr. WHEATON, the witness further testified as follows:)

132 In Mr. St. Germain's lease books, during the time while I was in his employ, if a revolving cue rack was sold it was put down as a revolving cue rack. I don't think that that was always the case, but as a general thing it was stated what kind of a cue rack went with the table.

(In response to questions of Mr. BOONE, the witness further testified as follows:)

I have partially examined Mr. St. Germain's books containing the entries made by myself while I was in his employ. I found entries made by me. I believe there was one of them that I saw yesterday, in which a change had been made. I examined twenty-five or thirty entries in my handwriting. There is a line vacant in one order. I only saw one entry of mine that had been changed that I know of. I know there was one that I can recollect was a revolving cue rack, and it does not appear so in the book.

(In response to questions of Mr. WHEATON, the witness further testified as follows:)

133 The one that I last referred to was a cue rack made and ordered for a high price. There was another one—Mr. Atkinson, of Oakland. That was a revolving cue rack also, but it does not so appear in the book. I distinctly remember that Atkinson's rack was a revolving rack.

(Plaintiff rests.)

In conformity with agreement of counsel, further hearing is continued, subject to notice.

TUESDAY, *January 5th*, 1886.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Examination-in-chief of FREDERICK DREYPOLCHER on behalf of respondent:

In response to questions of Mr. WHEATON, the witness testified as follows:

My name is Frederick Dreypolcher; my age, fifty-two years;
134 I live in San Francisco, and I am a billiard-table maker. At the present time I am in the employ of Jacob Strahl & Company. F. de St. Germain now comprises the firm of Jacob Strahl & Company. I am foreman of Mr. de St. Germain's billiard-table factory. I know the amount of labor and expense required to put up one of these revolving billiard-cue racks after they come from the factory where they are turned. It is one day's work. I have here one of those racks in pieces, just as it comes to us from the mill. It comes to us in several pieces. The small pegs dividing off the cues are not fastened into the racks when they reach our factory.

(The several pieces making up a revolving cue rack produced by the witness and above referred to are introduced in evidence by respondent, marked "Respondent's Exhibit 2.")

After the rack comes to our factory we take the two pieces making one of the brackets, join them together, and put in screws to fasten the parts together. This has all to be filed up and sandpapered before they go to the varnishers. The top octagonal
135 piece is also sand-papered and filed up. As it appears in Exhibit 2, the standard is put together. The several pieces making up that standard are not together when they come to us from the mill. With the turned portions that come to us we do nothing but put them together. They do not require any sand-papering; they are all finished at the mill. The piece on the back side of the bracket is for the purpose of fastening the bracket against the wall by screws. After we have put the different parts together the cue rack is next sent into the varnishing-room, where it is varnished and finished up. The varnisher is here. I think he can testify in relation to what is done in that department better than I can. It takes one man one day to finish up one of those racks in good shape after it comes from the mill where the parts are made. That does not include the varnishing. What that will cost depends on the man's wages. My wages are three dollars and a half a day. The wages of the men who do that kink of work is two dollars
136 and seventy-five cents a day. The castings shown on the cue rack, as put in evidence here, have to be added to the cue rack after it comes to our establishment from the mill. Those castings consist of four pieces, two pivots and two sockets. I am not positive what they cost. I believe they are twenty cents for the set of four pieces.

I don't know what rent Mr. St. Germain pays for his factory. On my time-book there is now nineteen men. That does not include the men in the office, but only the mechanics. I have been there six years next March. During that time the number of men employed in my department has been from nineteen to twenty-five. That includes all the mechanics.

I don't know what the demand has been for revolving cue racks since the 7th day of last January, when the patent expired. I don't know of any that have left the shop the last year, although they

may have left without my knowledge. There has none of these revolving cue racks been put together in the defendant's factory since the 7th day of January, 1885.

137 The cue rack, Exhibit 2, came from Mr. Hatch. The standard of that cue rack has never been used, but Mr. Hatch has had it about his place for some time, and it has become dirty. I have brought here to-day one of those cue racks, put together and finished up.

(Cue rack last above referred to introduced in evidence by respondent, marked "Respondent's Exhibit 3.")

Cross-examination of FREDERICK DREYPOLCHER:

In response to questions of Mr. BOONE, the witness testified, on cross-examination, as follows:

I have been foreman of Mr. St. Germain's factory for six years on the 7th of August next. I came there in March preceding. Mr. Field has charge of the varnishing and finishing of these cue racks in the factory. I have charge of putting them together. I do not do it myself, but it is done in the shop under my directions. We generally get about a dozen of these cue racks at a time at the
138 mill. They come to us in this knocked-down condition, separate. The cabinet-maker will generally take about a dozen to put together at one time. Sometimes he puts them altogether at once and sometimes he don't. We generally give him about a dozen at a time to put together. When he is in a hurry he finishes one up. Generally he will take parts of one and finish them and then take parts of another and finish them, if he is going to finish a whole lot. He will finish a dozen and turn them over to the varnisher, when he finishes a lot. It will take about two weeks for him to finish a dozen ready for the varnisher.

I keep the time book of the men. I do not keep account of the work each man does opposite his time. I have no memorandum showing how long it takes our men to put together a dozen of these cue racks. I only have a memorandum from my memory. I keep no books except the time book. Our men work sometimes by the day and sometimes by the piece. They never work piece-work on putting together these revolving cue racks. We have never
139 had them done by the piece; they have always been done by day's work. I don't know, as a matter of fact, that one man can put together a dozen of these cue racks in a day.

As to the weight of a set of these castings which I have spoken of, I never weighed them. I couldn't tell you about what they weighed; I don't know. As to whether or not they weigh two pounds, I don't know the weight. I don't know whether or not they weigh two pounds; I don't think so. I don't think they will weigh one pound. I don't believe they weigh more than half a pound. As to what is paid for these castings, I have never seen the bill. I understand that they are ten cents a pair, which would make the complete set for each rack twenty cents. I don't know positively what they cost.

I have never timed a man so particularly as to know how long it will

take him to sand-paper the parts of one of those cue racks. The man who turns them sand-papers the turned pieces. I couldn't answer the question as to how long it takes a man to sand-paper those
140 parts of one of those cue racks which require to be sand-papered after they come to our shop. It takes him more than ten minutes. As to whether or not it takes him twenty minutes, I can't answer the question any more directly than I have done. Besides filing and sand-papering them he joints them and puts them together—fits the joints where they go together.. I have never timed it in that way so as to know how long it will take him to fit those joints. I would say a man ought to make the two joints of the brackets and glue them in three-quarters of an hour. I have never timed it. After he has got the joints together he puts a few screws in the back. A man ought to put in the four screws in the two brackets in about twenty minutes. As to whether our men work that way, taking five minutes to put in a screw, those are large screws and they have to make a hole first. After putting the screws in the workmen next fits the castings on. I have not timed him to know how long that takes. I suppose he might put in the four of them in
141 about an hour. I look after these men to see that they do their work, but I don't time them so closely as that. If a man took three-quarters of an hour to put those two castings in, I don't think I would, as foreman of the factory, find any fault with him. Those castings are put on the last thing. Of course, they are all cleaned off before that is done. They put them together and then they go to the varnisher. I suppose it takes him about half an hour to varnish them; I can't say positively; I don't swear to that at all; I state that it takes a man a whole day to put together one of those cue racks—a day of ten hours.

I have had some talk with Mr. St. Germain about the testimony that I should give in this case. He asked me about the amount of time that it would take to put up one of these cue racks. I told him just as I stated here. Mr. St. Germain spoke to me about it last evening for the first time. He told me I would have to testify about these cue racks. He asked me how long it would take
142 to do it, and I told him how long it would take. He has not told me to make any investigation in the matter to find out how long it would take. I didn't make any investigation, particularly. I have, many years ago, put together one of these cue racks myself. I believe I made the first one that ever was made in the country. That was in 1868. It may be a little different pattern, but it was similar. I don't remember that I have put any together since 1868 personally; I may have. I have no particular man in the establishment who puts these together—just as it happens mostly. I think I know who put together the last lot that was put together there, but I am not sure. He is not working there now. He is a man who worked there by the name of Varra. I am not sure that he was the man. I don't know where he is now. I don't think there is one man in their employ just now who ever put a lot of these cue racks together. I don't know who put together the lot next to the last. I am not positive who put together the last one.

If I had my time book I could give you the name of the per-
143 son who did put a lot together in our establishment. I don't remember the names. I am very forgetful of names. I suppose that it was as much as a year and a half at least, maybe longer, since the last lot was put together there.

Examination-in-chief of TIMOTHY FIELDS on behalf of respondent:

In response to questions of Mr. WHEATON, the witness testified as follows:

My name is Timothy Fields; my age, thirty-two years; I live in San Francisco, and I am a varnisher. I am in the employ of F. de St. Germain. I couldn't answer as to when the last revolving cue racks were finished in Mr. St. Germain's factory, for I don't know. It has been a long while since we had any around there; it has been a long time ago since we finished any. I don't know anything about what work had to be done on those revolving cue racks after they came from the mill to Mr. St. Germain's factory. I had nothing to do with that department. The work that I have had to do with them is varnishing them, rubbing them. Sometimes
144 we stained them in imitation of walnut and sometimes in imitation of rosewood. The first thing that I would do after they came into my department would be to give them a coat of shellac. Next I would sand-paper them. The object of sand-papering them after the coat of shellac was put on was to take the roughness off before varnishing. The next step would be a coat of varnish. The staining was done when they came down from the cabinet-maker's shop, when they were stained at all. They were stained on the raw wood. When they were stained at all they were stained before any shellac was put on them. After the first coat of varnish was put on them they stood for a day or so, and then they were varnished again. There would be no rubbing down after the first coat of varnish was put on. The time that a man would spend on one of those revolving cue racks after it came into my department was about fifteen minutes on each coat; three quarters of an hour altogether, on an average, and it would take an hour and a half for rubbing on each rack. The wages of the men in my department are from
145 two and a half to three dollars a day. There was no foreman in my department who didn't do manual labor. I am the overseer, and I labor just the same as any of the men. Ten hours' work constituted a day's labor in that factory at the times when we were manufacturing these revolving cue racks.

Exhibit 3 represents a cue rack with its brackets after it is varnished. It is not finished, because it ought still to be rubbed. The ornamental projection which appears circling around the upper plate on cue rack, Exhibit 3, is put on in the factory. That is fitted after the rack is all finished. Those can be taken right off. I don't know where the particular cue rack, Exhibit 3, came from. I brought it here from Jacob Strahl & Company's. None of those cue racks have been finished in my department since the 7th of January, 1885.

Cross-examination of TIMOTHY FIELDS:

In response to questions of Mr. BOONE, the witness testified,
146 on cross-examination, as follows:

I have been in the varnishing department of Mr. St. Germain pretty near six years. I have been there all that time except about two months. I have superintended the varnishing and finishing of all the cue racks that went through the house since I have been there. When they came into my department they came in the raw wood, put together like Exhibit 3. The first thing I did was to give the rack a coat of shellac, except when I stained them. Sometimes when they went with a dark table we stained them. The number that were stained was about equal to the number that were not stained; I guess about half of them were stained. When they were stained it took about fifteen minutes to stain each one. Then we put on a coat of shellac, which took about fifteen minutes. Then we went to work and sand-papered it; that would take about five minutes. Then next we put on a coat of varnish. Then it stood awhile and another coat of varnish was put on. It took fifteen minutes to each coat. Then they were generally rubbed with pumice
147 stone and water or pumice stone and oil; that would take, when we did it, an hour and a half. Only the dark racks were rubbed down in that way. I am sure it took about an hour and a half to rub one of them down.

Two men are employed in my department at the present time—myself and Mr. Hanna. Mr. Hanna is working there; he has been working there five weeks. A year ago Mr. Schafer worked with me there; he is working down at the foot of 5th street now, I understand, at some furniture factory down there belonging to the party who owns the Tivoli. Two years ago John Hannan worked with me; I couldn't tell you where he is now. I don't know where any of the men are who assisted in doing the varnishing on the cue racks at that establishment besides those I have mentioned.

Re-examination of LEWIS ECKHARDT on behalf of respondent:

In response to questions of Mr. WHEATON, the witness tes-
148 tified on re-examination as follows:

I have taken the books of respondent and the list of revolving cue racks made up by the master and looked over it in part with Mr. St. Germain and Mr. Lancel, our book-keeper. I was here part of the time with them when they were examining about it. I have here a memorandum made at that time. As to the following cue racks specified in the master's list, I find them included in the list Exhibit A, heretofore furnished by respondent, namely:

Page 278, Olcese & Garibaldi.

Order book.
June 1, '83, to May 8, '84.

304, Williard Gardner.
309, J. A. Trask.
365, True & Carlin.
372, James Wren.

Order book.

Jan. 4, '81, to Feb. Page 152, S. S. Simons.
159, W. Jones.
409, Charles H. Kuhn.
418, Hardy & Amos.
107, W. B. Hooper.
168, Vinson & Watson, four racks.
201, Charles Durner.
356, Joseph Phillips.
377, Ries & Cunningham, two racks.
379, Bond Brothers.
349, Tully, Ochoa & Co.
149 440, Howe & Halliwell.
10, J. B. Sellers.
400, M. O'Connor.
414, Mrs. F. George.
101, L. H. D. Lange.
133, H. C. Willis.

As to the following racks, specified in the master's list, I know of my own knowledge that they were either never sent or that they were returned.

At Mr. Boone's request I will state as to which of these we received money on:

Page 9, Lane & Rodgers, received money on that.
14, Peterson, received money on that.
Book G, page 44, Caprasecca, three racks, received money on those.
214, Ferguson, received money on that.
236, Dwyer, never received a dollar.
282, Tomasini, never received a cent.
286, Cunningham.
296, B. R. Parrott, received nothing on that.
38, Officer's club, table rented and returned, received money on that.
69, Huff, table sent and returned, received money on that.
184, Uribe & Co., table never sent, received no money.
269, Langfeldt & Meyer, table not sent.
348, Johnson, table returned, received money on that.
150 375, Thacker & Cady, tables rented and returned, received money.
40, Hecht. That was not a revolving cue rack.
61, Bryson. That is one of the tables sent to Small and charged against Small; received money on that.
93, Ketcham, table never sent.
109, Roach, table never sent.
181, Gerken, table rented and returned, received money.
262, Connor, table returned. I don't think he paid anything.

Book G, page 326, Mueller, table returned, received money on that.
358, Byrnes. Those three were stationary column racks, around a column. They were not revolving racks.
407, Roberts & McGrath, table returned. We received nothing from them.
37, Stoneman, Levi & Co., table returned, received money.
82, Trimmer, order never executed; table not shipped. We received no money on that.
194, Varcoe. The rack that went with that table was
151 a second-hand rack that came to us in exchange with a Brunswick & Balke table.
2, Sherman, two racks. Those were the same two racks sold to Small, of Carson City, both of which were subsequently sold to Sherman; one of them we got back, but the remaining one was sold to Bryson.

Most of these racks were sent to the parties and used by them for a time and returned. The tables were rented and taken back; some of them were not used at all by the parties. During the last two years I have been manager in Mr. St. Germain's employ while he is away, and salesman, and tending to general business—whatever is assigned to me. Within my personal knowledge I don't know of a single case in which we have sent revolving cue racks out within the past two years; wherever they asked for one I, of course, talked them out of it because of this litigation pending, for one thing, and, secondly, I don't think that they are a desirable thing at all. I have known of cases in this city where the brackets have got loose
152 on the walls and the whole rack fallen down. I have known that to be the case. I don't think that they are a desirable rack at all; it has been a novelty in its time. I have not had any demand for them while selling a table for two years past. These revolving cue racks have been superseded by the old racks; a little different styles, more elegant and fancier than formerly—wall racks and column racks. Column racks placed around a column in the billiard-room I saw years before I was in the billiard-table business and I have seen them for six years past; they have them in the Russ House on a couple of columns there, and they have had them in the Brooklyn Hotel, and I know that they were formerly in the Cosmopolitan Hotel; those racks are not revolving racks, but stationary.

Recross-examination of LOUIS ECKHARDT:

In response to questions of Mr. BOONE, the witness testified, on recross-examination, as follows:

153 Prior to two years ago there was no particular demand for these revolving cue racks. Once in awhile they would ask for them. Very often when a man asks for a table he will never suggest the kind of rack he wants. There was quite a demand on

the market for them. People in the country would say sometimes that they wanted a revolving rack. I don't think there has been one of these racks sold without a table while I have been in that establishment; not more than two or three, at the most. When a sale of one of those racks was made separately it would appear in the books. We enter in the cash book everything that is sold for cash. When we sell a revolving cue rack we do not always enter it as a revolving cue rack. There may be cases where sales of these revolving cue racks might be entered without the word "revolving" appearing. In those particular cases they would not appear in this account, if there were such cases. I think that these tables
154 that were never shipped appear entered in our lease books. The contracts were made out and sent to the parties for their signatures in some cases, and after getting the table the man would not pay, and, of course, we would order the table back. Everything was done by us to fulfil our part of the contract. We entered it in the order book and in the lease book, and the contracts were sent on for signature. When those tables were returned I think there were entries made in the books to show the transactions. I couldn't tell you whether I could show entries in the books to show that every one of these tables was actually returned, but I know within my personal knowledge that those that I have stated were returned, if any were sent. I don't remember now whether there is any memorandum to that effect in the books. I am testifying about them from my memory, knowing that the tables were never shipped or were returned. I was about the store a great deal. I am out once in awhile for a little time. A good
155 deal goes on while I am away, but I will go through the books and find out what has been done in my absence. What I have sworn to here I know positively about. On some of those tables which I claim here were returned we received payments. I will tell you which ones if you will read the list. We have delivered billiard tables with racks without a preliminary payment. If I trust a man and consider that he will pay on delivery, I will deliver a table to him. The general rule is to have money down when the order is taken. I think those entries in the cases where the tables were never shipped are entries in my handwriting. I entered the orders at the time and never paid any attention to them. I think that the ledger will show that those tables have been credited back. I don't care what the order book shows or what the ledger shows; I know that those sales that I have referred to were never made. So far as the ledger is concerned, I might
156 almost state that the tables were credited back or that they were never posted. I suppose we have the bills of lading for those that were returned. Tables sent to Oakland or around the city we have no bills of lading for. We didn't take receipts from the teamsters who took them. I couldn't tell whether we had an equal number of wall racks returned during the same time. I suppose we did have.

In response to questions of Mr. WHEATON, the witness further testified as follows:

I don't know how many revolving cue racks Mr. St. Germain had on the 7th day of January, 1885. I couldn't tell whether or not he had any. I know that during this litigation we didn't make or sell them if we could possibly help it. I wouldn't know at the time whether or not he had any unless I had particularly inquired from the foreman. When these revolving cue racks would come back with tables they were second-hand, of course. We
157 would sometimes send them out with rented tables. We had a great many rented tables out, and they would be used with rented tables. When we sent them out with rented tables the entries would appear in the lease books. They would be among the number that would appear in the lease books.

In response to questions of Mr. BOONE, the witness further testified as follows:

We kept these racks in use as long as we could. We kept them rented out as long as they were in our possession. It is a fact that a great many of these cue racks and tables—not half, I should say—came back to our establishment when the parties wanted to dispose of them.

There appears in the master's list an entry of six revolving cue racks sold to the Cosmopolitan Hotel.

Re-examination of FERDINAND DE ST. GERMAIN, on behalf of respondent:

158 In response to questions of Mr. WHEATON, the witness testified, on re-examination, as follows:

I became interested in the house of Jacob Strahle & Company in September, 1870. In December, 1873, I became sole proprietor.

Examination-in-chief of JOHN B. FELLE, on behalf of respondent:

In response to questions of Mr. WHEATON, the witness testified as follows:

I know that the six billiard cue racks that were in the Cosmopolitan Hotel were not revolving cue racks. They were stationary cue racks placed around a column. They were circular cue racks. I know there were six around a column. Those racks are in the establishment of Jacob Strahle & Company at the present time.

(Continued, in conformity with agreement of counsel, to January 7th, 1886, at two o'clock p. m.)

159 THURSDAY, *January* 7, 1886.

Present: Mr. Boone, of counsel for complainant; Mr. Wheaton, of counsel for respondent.

Examination-in-chief of P. LIESENFELD on behalf of respondent:

In response to questions of Mr. WHEATON, the witness testified as follows:

My name is P. Liesenfeld; I am fifty-three years old; I live in San Francisco, and I am a billiard-table maker. I am familiar with the kinds of cue racks known as revolving cue racks, which are fastened by brackets on the walls of rooms where they are used. I am not very sure how many years I have been selling those. I think it is about from ten to fifteen years—between ten and fifteen—I have been selling them here in San Francisco. I have never paid any royalty for the privilege of doing that. I have never been asked to pay any royalty. I was never sued for doing it. I am not sure whether or not Mr. Brunswick has been aware that I have
160 been selling those during those times. I never knew. I never had — talk about it. My factory is a pretty small one now. Besides myself, Mr. Jungblut, a dealer in billiard tables here, has been selling these revolving cue racks during the last ten or fifteen years. I know that he has been selling them for about seven or eight or ten years. There is not any demand at all for these revolving cue racks in the last four or five years in my house. I don't know what the demand is for them in other houses.

Cross-examination of P. LIESENFELD:

In response to questions of Mr. BOONE, the witness testified, on cross-examination, as follows:

My place of business is 945 Folsom street. I have been there four years last January. I have been in the billiard-table business in San Francisco thirty years. I never manufactured these revolving cue racks; I bought them. I fitted them up in my shop—
161 that is, hung them up for show. They were all finished when they came to my shop. I didn't do any finishing to them after they came to my shop, except varnishing. I don't think that I have sold altogether within the last ten or fifteen years a dozen revolving cue racks. I know that, pretty sure. The most of them I had out I had to take back again. I kept them as a part of my stock; had them put up with cues in for show. I exhibited them the same as I did any other cue racks. I have done but a very small billiard-table business. For those which I bought I paid five and seven dollars each—the last that I bought. I bought them from Mr. Melle. Those that I bought for that price were all finished except varnishing. They were made out of Oregon maple, most of them. That is the cheapest wood that I could get them made out of, cheaper than black walnut, cheaper than oak, cheaper than ash. When I bought them they had all the fittings on them. I never bought any black walnut ones. I never made any in
162 my store. I don't think I had any stained black walnut ones or any ash—all maple.

Re-examination of LOUIS ECKHARDT on behalf of respondent:

In response to questions of Mr. WHEATON, the witness testified, on re-examination, as follows:

I have here a bill for the castings used in these revolving cue racks which were sold by Mr. St. Germain. I don't know who paid that bill. Twenty cents a set was paid for those castings. I went down to see Mr. Savage this morning to be sure how many of those castings were in a set, and he said that a set consisted of two—a pin and the corresponding casting. It takes two of those sets on one revolving cue rack. The holes are drilled in for the screw-holes.

(The bill above referred to is introduced in evidence by complainant, marked "Complainant's Exhibit Savage Bill.")

In respon*dense* to questions of Mr. BOONE, the witness further testified, on recross-examination, as follows:

163 That is not the only bill that we ever got for those things. I have compared that bill with one or two other bills; they were all the same price, right through. I don't know what were the dates of those bills with which I compared this. I went down to see Mr. Savage this morning and sent the foreman down there to see in what a set consist, because the foreman testified yesterday that there were four in a set; they said down there that two constitute a set. I don't know as to how many compose a set, except what he told me. I said, "What do you sell for a set of these?" He said "Two."

(Respondent objects to all the testimony of this witness on the ground that it is incompetent, hearsay.)

Re-examination of FREDERICK DREYPOLCHER on behalf of respondent by Mr. WHEATON:

Q. 1. Do you know what a set of those castings consist of?
A. Yes, sir.

By Mr. BOONE:

Q. 2. How do you know?
164 A. Because I was told.

By Mr. WHEATON:

Q. 3. Do you know any other way?
A. I don't know any other way excepting what I was told by the foundryman.
Q. 4. Do you know, without regard to what you were told, what constitutes a set of those things?
A. Yes, sir. I should say that I had been using those castings and personally familiar and acquainted with them for five years at least.
Q. 5. How many of those castings constitute a set? Answer of

your own knowledge and without regard to what anybody ever told you.

A. One pair; there are two pairs used in each rack. As I use the term "pair," a pair consists of the socket and the pin. One casting has a socket in it and the other has a pin in it. The socket and pin which are used at the top are precisely the same as the socket and pin which are used at the bottom.

In response to questions of Mr. BOONE, the witness testified, on re-cross-examination, as follows:

165 That is what I call a set. I never heard anybody else particularly call that a set.

Q. 1. Do you know, of your own knowledge, outside of what anybody has ever told you, what the foundrymen call a set in making a bill?

A. I know that two is a set.

Q. 2. (Question one repeated.)

A. Without anybody ever telling me—no, I don't.

In response to question of the master, the witness further testified as follows:

I was always under the impression that two of these castings constituted a set. To make sure of it I went to the foundryman and asked him about it. I don't know that I testified the other day that there were four in a set.

Respondents rests.

Examination-in-chief of P. LIESENFELD on behalf of complainant:

166 In response to questions of Mr. BOONE, the witness testified as follows:

I am the same party who just testified on the part of the respondent in this case.

Q. 2. I would like to ask you how many revolving cue racks one man can put together in a day after all the parts are manufactured by the turner ready to be put together.

(Objected to by respondent unless it is shown that the witness knows as to the facts inquired of.)

A. These cue racks came to my house all put together when I bought them years ago. I have not bought any for the last five or six years. When I bought any they were all put together, all ready to be varnished.

(It is agreed that, if recalled as a witness on behalf of respondent, Timothy Fields would testify that each of the three coats of varnish or shellac placed upon a cue rack in St. Germain's establishment would cost twenty-five cents, making a total cost of shellac
167 and varnish used on each cue rack of seventy-five cents.)

(Continued, in conformity with agreement of counsel, to the 8th instant, at two o'clock p. m.)

FRIDAY, *January* 8, 1886.

Present: Mr. Boon, of counsel for complain-t; Mr. Wheaton, of counsel for respondent.

Examination-in-chief of Felix O'Neil on behalf of complainant:

In response to questions of Mr. BOONE, the witness testified as follows:

My name is Felix O'Neil. I am fifty-two years old. I live in San Francisco and I am a billiard-table maker. I have been in that business about twenty-five or twenty-six years. I have been in San Francisco about the same time. I went into that business three or four weeks after I came here and I am in that business still. I am now at work for the Brunswick-Balke-Callender Company,
168 655 Market street. I am foreman of the establishment. I have been foreman there over five years and a half. Before I went to work for that company I was at work for Jacob Strahle & Company. That was up to 1880. Before 1880 I worked for Jacob Strahle & Company about fifteen years, more or less. I was foreman there. I had something to do with the putting together and finishing of cue racks while I was in Jacob Strahle & Company's employ. I put some of them racks together myself and I instructed other men to put them together. While I was there I put together or had put together under by [my] supervision and finished some revolving cue racks. We got the partially made cue racks from the mill in pieces.

All the revolving cue racks that were made while I was there were put together under my direction and supervision as foreman of the establishment. There was one lot of racks that we got there that came already complete, finished—one lot that Mr. Heney
169 made. There was about a dozen in that lot. When those racks came to Jacob Strahle & Company's in pieces, in a knocked-down condition, they were already fitted in the mill and they were put together in the establishment by different parties under my supervision.

Q. Do you know how many revolving cue racks a man could put together in a day when the cue racks were delivered in separate pieces—in a knocked-down condition?

(Objected to by respondent as incompetent; objection overruled.)

A. A man can put six of them together in a day. I didn't keep any account as to how many a man ever did put together in a day while I was with Jacob Strahle & Company, so I can't say as to that. I don't know how long it did take a man to put together one of those cue racks after it came into our establishment in a knocked-down condition, but I know about how long it ought to take. I didn't keep any run of any one rack or any half-dozen racks.
170 I have put them together myself. I could put one of them together in an hour and a half. By putting together I mean taking it just in the condition that the rack, Exhibit 2, is in and

putting it in condition for the varnishing. I don't know exactly what it costs to varnish one of those revolving cue racks. I could tell very near what it was worth. They can be varnished for about thirty cents each; that includes the varnish and the labor of putting it on; that includes the staining; it includes everything. It does not include the rubbing of it down in pummice stone. They never were rubbed at Jacob Strahle & Company's while I was there. Four castings are used in putting together a revolving cue rack, ready to be used. I made an agreement about those castings. I got the order to have them cast and made an agreement about the price, but I don't recollect what the price was. I made the agreement with Mr. Savage. That was when we first commenced to manufacture those racks ten years ago or so. I know that four of those
171 castings compose a set. I don't know how many of those castings were billed as a set; I didn't order by the set; I ordered a hundred castings. I don't remember what it was that they cost.

Cross-examination of FELIX O'NEIL:

In response to questions of Mr. WHEATON, the witness testified, on cross-examination, as follows:

Answering from my recollection, I should say that there are about forty pieces in one of those revolving cue racks as it came to St. Germain's establishment; perhaps a few more—forty-five. When the workmen were putting those racks together, one man might commence at one part and another man at another part. No two men would, perhaps, go to work in the same way. I would stick the pins in the first thing—the pins dividing the cues; then I would put the shaft together; then I would take the brackets and fasten them on, fix them up, smooth them off, if they required any smooth-
172 ing; they didn't always require smoothing. They didn't usually come in in the same condition that these pieces composing Exhibit 2 are in. They came in better condition than these. They came just as the machinery left them, but they got more machinery work than these pieces in Exhibit 2 have. These brackets in Exhibit 2 are not smooth, only on one side, and they used to be smooth on both sides. We used to sand-paper them. It is easier to smooth a surface of lumber with the grain than against the grain. I don't know as to how much of the surface of the brackets ran across the grain. Those pieces of revolving cue racks that we had were smoother than those in evidence; they didn't require so much hand smoothing. The hand smoothing that we bestowed on them was with a smoothing-plane, scraper, and sand-paper.

Q. 1. Have you any recollection that you did put together one of those and finish it up in an hour and a half?

A. Yes, sir; there was not one cue put together at a single time.

Q. 2. (Question 1 repeated.)

173 A. I didn't keep the run of them. When I was at work at these things I didn't work at them all the time.

Q. 3. (Question 1 again repeated.)

A. I don't recollect that I did. I am now in the employ of the Brunswick-Balke-Collender Company. I am employed by Mr. Brunswick, complainant. We used to put on one of these cue racks two coats of varnish and a coat of shellac. I never measured the varnish I put on one. I varnished some of those racks, but I didn't measure the varnish. I can varnish a dozen of them with a half a gallon of varnish, which costs seventy-five cents. Shellac is worth three dollars and a quarter a gallon. When I say that I can varnish a dozen of them with a gallon of varnish, I mean to include the varnish and shellac both. You can go right over one of those thirty-six times with a half a gallon of varnish. We didn't use that annular border or crown that goes around the upper plate of the cue rack, Exhibit 3. It was not made in that way at the
174 time I was there. That I don't know anything about. It has been five and a half or six years since I have either put together or superintended the putting together of one of these revolving cue racks. I have never done it since I have been employed by Mr. Brunswick. We get them already complete from Chicago; we don't put them together in our establishment. I think about a half a dozen came to Mr. St. Germain from Chicago while I was in his employ. I can't tell exactly; about half a dozen. I don't know whether or not three dozen came to him from Chicago in one lot. I saw all that came, but I don't recollect how many.

Re-examination of EMANUEL BRUNSWICK on behalf of complainant:

In response to questions of Mr. BOONE, the witness testified, on re-examination, as follows:

I know what is the cost of the castings used on these re-
175 volving cue racks. We paid six cents a pound. Ours came from Chicago. I don't know what the defendant paid for them. There are four pieces of those to a set. I can't tell exactly how many of them it would take to make a pound.

In response to questions of Mr. WHEATON, the witness further testified, on recross-examination, as follows:

I don't think that castings are a great deal cheaper in Chicago, where ours were obtained, than they are here in San Francisco. They ought to get castings as cheap here as in Chicago. I don't know how many revolving cue racks were furnished to Mr. St. Germain from Chicago by our company. The bills are in evidence and will show for it. I couldn't tell you exactly how many revolving cue racks we have sold in the last year. We have sold a good many—a great many. I couldn't tell you. We have sold a dozen within the year. I couldn't tell you now the names of any of the parties to whom we have sold such racks within the past
176 year. If you wish me to do so, I will examine our books and give you the names of all the parties to whom we have sold revolving cue racks. I don't know whether it is more or less than twenty. I couldn't say. It may be fifty, may be twenty, may be not so many. I couldn't say.

By Mr. WHEATON:

Q. I will ask you to furnish the master the names of the parties to whom you have sold such cue racks within the past year.

Testimony closed.

177

EXHIBIT A ACCOUNTING.

BRUNSWICK *vs.* ST. GERMAIN. } Ref'ce.

EXHIBIT A ACCOUNTING. S. C. H., Master.

March	26, '77	1	May	23, '81	1	June	9, '83	1
April	24, '78	1	June	25, "	1	July	6, "	1
May	31, "	2	July	19, "	1	Aug.	10, "	3
June	8, "	2	Oct.	13, "	1	"	15, "	1
"	10, "	1	"	28, "	1	"	16, " (14)	1
Aug.	27, "	1	Jan'y	18, '82	1	Sept.	4, "	1
Oct.	11, "	1	"	30, "	2	Jan'y	21, '84	1
Jan'y	22, '79	1	Feb'y	4, "	1	Feb'y	7, "	2
June	10, "	1	March	8, "	1	"	11, "	1
Aug.	29, " (29)	1	May	10, "	1	March	26, "	1
Sept.	30, "	1	June	10, "	1	"	31, "	1
Nov.	17, "	1	July	8, "	1			
Feb'y	13, '80	1	Aug.	7, "	1			
March	20, "	1	"	18, "	4			
April	6, "	1	Sept.	20, "	1			
July	19, "	2	"	26, "	1			
Aug.	9, "	1	Nov.	2, "	1			
"	30, "	1	Dec.	12, "	2			
Sept.	4, "	1	Feb'y	17, '83	2			
"	10, "	1	March	17 should be March 7, '83	1			
					3			
"	13, "	1	"	23, "	1			
" (17)	16, "	1	Apr'l	13, "	2			
178								
Oct.	18, '80	1	Apr'l	23, '83	1			
March	9, '81	1	"	25, "	1			
May	5, "	1	May	3, "	1			
"	9, "	1	"	17, "	1			
"	14, "	1	June	8, "	1			
		30			34			14

Total, 78.

179 BRUNSWICK v. ST. GERMAIN. } Ref'ce.

EXHIBIT KNORP ACCOUNTING. S. C. H., Master.

SAN FRANCISCO, *July* 31, '84.

The Brunswick & Balke Co.

GENTLEMEN: In accordance with your request, I furnish below a list of cue racks (revolving) made by me for Mess. J. Strahle & Co., together with dates & prices.

Yours truly, A. T. KNORP.

1879.			
Aug. 15.	12 ash maple revolving cue racks		78 00
Oct. 9.	4 wal. " " "		30 00
1880.			
June 29.	3 " " " "		21 00
1881.			
Jan. 28.	3 " " " "		21 00
Feb. 21.	3 " " " "		21 00
M'ch 24.	4 " " " "		28 00
May 17.	6 " " " "		43 80
1882.			
June 22.	4 " " " "		33 00
1883.			
M'ch 19.	12 maple " "		66 00

180 BRUNSWICK v. ST. GERMAIN. } Ref'ce.

EXHIBIT SAVAGE BILL ACCOUNTING. S. C. H., Master.

Manufacture house fronts, mining machinery, pipe & plumbers' fittings, ornamental iron-work, and all kinds of heavy or light castings.

Terms cash, payable in U. S. gold coin.

Telephone number 608.

SAN FRANCISCO, *April* 6, 1882.

Mr. Jacob Strahle & Co. to Savage & Sons, Dr.

R. Savage, R. H. Savage, John E. Savage, Proprietors. } Empire Foundry and Machine Works, 135 to 143 Fremont street; prospecting mills, stamp batteries, saw mills, edgers' set works, gearing and shafting, Dodge's rock-breakers, rolls, concentrators, pulverizers and furnaces, green-house fittings, and Harvey's heaters.

Factory, No. 135. Machine Shop, No. 143. }

25 sets cue castings, 20 ---------- 5 00

R. Savage.
John E. Savage.
R. H. Savage.

Statement.

SAN FRANCISCO, *April* 28, 1882.

Mr. J. Strahle & Co. to Savage & Sons, Dr.

Empire Foundry and Machine Works, Nos. 135 to 145 Freemont street.

Ap'l 8. To mdse. as per bill rend. 5 00

Paid.

SAVAGE SONS,
G.

181 *List of Revolving Cue Racks Originally Entered in the Respondent's Order Books and not Included in the Statement, Exhibit A.*

(This list is referred to in the testimony as the "Master's list.")

Order book, June 9, '69, to Oct. 23, '71.

(No name), 6 circular ..... Feb'y 14, '70
✓ Wesler, circular ..... Aug. 19,
? Mills, "Private round C. R., as per sketch" ..... Dec. 5,
✓ Thompson, circular ..... Jan'y 4, '71
✓ Hoight do. ..... Feb'y 7,

No order books from Oct. 23, '71, to Feb. 20, '74.

Feb'y 20, '74, to Jan'y 26, '75.

? Ballenhagen ..... M'ch 23, '74
? Pearson ..... May 18,
? Stover ..... June 16,
? S. P. Taylor & Co. ..... Oct. 3,
? G. K. Taylor ..... Nov. 3,

Jan'y 28, '75, to Sept. 15, '76.

Lease book.	*Page of order book.*		
	147	Wittenberg (2) ..... July	13, '75
C, 13	231	Bryant & Thomas, circular ..... Oct.	14,
	326	Hanson ..... Feb'y	3, '76
182	328	Small, circular	8,
	340	Turner ("order cancelled"), 2 circular	29,
	346	Miller & Olsen ..... M'ch	7,
	353	Turner, circular	16,
	362	Woods & Fordham, R. ..... M'ch	28, '76
C, 33	386	Hardman & Forsyth, 2 C. ..... Ap'l	24,
C, 48	412	Katzenstein & Co., C. ..... May	26,
	414	Matheson, C.	29,

Lease book.	*Page of order book.*			
	449	Taylor, C.	July	10,
	450	Livingston & Co., C.		11,
C, 72	464	Chesley & Co., 4		28,
Not. C, 68	468	Day	Aug.	3,
	489	Cosmopolitan Hotel, 6 round		25,
	503	Mayer & Co., "2 C. plain open racks"	Sept.	9,

Sept. 16, '76, to Feb'y 12, '77.

B, 15		Taylor & Kellum, R.	Oct.	24, '76
		McNulty, C. R.		30,
		Spanish American Club	Nov.	20,
		Jones		24,
		Benton & Myres		29,
		Rolft	Dec.	6,
		Lamberson		7,
		Ryan		8,
B, 35		Burcham, R.		9,
		How & McBride		14,
		Pillot & Co.		15,
		(Barryson or Barr)	Febr'y	13, '77

183 Feb'y 14, '77, to Nov. 7, '78.

Not. B, 84	49	Gentsch	Ap'l	7, '77
	52	Danzee		11,
	60	Flynn & Anderson, C.		19,
	83	Buena Vista Club	May	14,
Not. A, 46	90	Stahl		21,
	101	Lilienthal & Co., C.	June	4,
	107	Jillison		11,
	120	Fuller		25,
Not. B, 103	122	Striplin		28,
Not. B, 105	134	Cook & Mills	July	17,
B, 114	158	Griswold	Aug.	17,
Not. B, 6	194	Roseberry & Knight	Oct.	4,
	236	Bocqueraz & McKee	Nov.	24,
	254	Phelps & Winters	Dec.	17,
	261	Finch		31,
Not. A, 24	277	Gauthier	Jan.	22, '78
	282	Richard		30,
	293	Utting	Feb'y	5,
	314	Williams	M'ch	19,
	315	Loose		19,
	323	Riley		30,
A, 42	329	Long	Ap'l	8,
A, 40	329	Blabon		8,
A, 43	330	Lamberson		11,
A, 54	366	Taylor	May	28,

Lease book.	Page of order book.		
A, 57	377	Ries & Cunningham (should be 1 rack, 2 being included in Exhibit A), 3	June 8,
	379	Bond Bros. (2—1 in "Exhibit A")	June 10, '78
184	428	Dorobjee Novrojee, 2	Aug. 27,
	462	Frank Dallemand & Co.	Oct. 10,

Nov. 11, '78, to M'ch 26, '80.

	58	Dorobjee Novrojee	Jan. 15, '79
A, 120	119	Bulfinch, 2	Ap'l 1,
	138	Bolin	23,
A, 127	132	Atkinson, 2	16,
A, 138	155	Clifton House	May 10,
A, 140	164	Frankl	19,
D, 6	188	Chrisman	June 7,
	197	Cook	17,
	302	Crane, Hastings & Co.	Oct. 7,
D, 39	307	Hamilton & Co.	11,
	336	Siebert & Vassals	Nov. 3,
D, 72	340	Bronson & Co.	8,
D, 77	349	Tully, Ochoa & Co.	17,
D, 83	381	Williams	Dec. 15,
D, 84	386	Fulkerson, 2	18,
	406	Yeadon	Jan. 16, '80
D, 95	418	Napa Reading-Room	29,
D, 106	440	Howe & Halliwell, R.	Feb'y 23,
D, 109	449	Mundell	M'ch 2,
	466	Wood, "Pat. R. R. rack"	16,

M'ch 26, '80, to Jan. 3, '81.

D, 122			
D, 122; E, 78	10	Cellart	Ap'l 6, '80
	13	Ahrent & Co.	8,
185	51	Burchardt (2?)	May 14,
	58	Parker, Campbell & Co.	21,
E, 1	63	Ryall & Moore	25,
E, 4	65	Wortmann	26,
E, 20; G, 91	85	T. T. Burgess	June 11,
E, 55	122	Liston	July 12,
	129	Mattock Bros.	19,
E, 62	132	J. W. Burgess	20,
E, 69	136	Stewart	22,
E, 73	137	Arberry	23,
E, 83	142	Cobb	28,
E, 87	159	Rodoni	Aug. 14,
E, 98; F, 25	170	Small, 2	25,
	182	Clarke	Sept. 6,
F, 29	214	Ferguson	Oct. 5,

Lease book.	Page of order book.		
F, 27	217	Banker	5,
	218	Urrela & Urioste	5,
F, 24	219	Weller & Cannon	7,
	236	Dwyer	21,
F, 63	271	Seaman Nov.	19,
	274	Hooker, R.	22,
F, 91	282	Tornasini	27,
F, 72	283	Dinwiddie	27,
F, 78	281	Snyder	27,
F, 83	286	Cunningham Nov.	30, '80
F, 94	296	Parrott Dec.	11,
F, 90	298	Starke	13,
F, 99	301	Kiely	15,

186 Jan'y 4, '81, to Feb'y 24, '82.

F, 104	9	Chambers & Mitchell Jan'y	11, '81
F, 107	10	West	12,
F, 20	13	Siebert & Vassals	13,
F, 125	14	Oneto & Ventra	13,
F, 121	26	Kelly	26,
Not. F, 124	38	Officers' Club Feb'y	7,
F, 137	65	Tullmann M'ch	8,
Not. G, 5	69	Hough	10,
	76	Loaiza & Co.	16,
	79	Langfeldt & Mayer, 3	18,
G, 10	84	Pundt	22,
Not. G, 17	102	Kaiser April	6,
G, 16	103	Bell & Austin	6,
	106	Hooper	9,
	107	Brunn	11,
G, 42	131	Pereira	29,
	151	Tapic Bros. May	13,
G, 47	152	Simons	14,
G, 43	159	Jones	19,
G, 66	166	Howlett & Morris	24,
G, 67	184	Uribe & Co. June	6,
	185	Wheaton & Luhrs June	7, '81
G, 68	188	Snead & Collins	10,
	197	Club Germania	17,
	224	L. J. Porter July	15,
G, 116	236	Robson	27,
	269	Langfeldt & Mayer Sept.	5,
	271	Rolker	6,
187 H, 18	293	Migel	29,
H, 32	331	Rego Oct.	28,
	338	Wilmerding & Co. Nov.	2,
H, 42	348	Johnson	12,
	362	Briggs & Gray	29,
G, 125	375	Thacker (Cady), 2 Dec.	10,

Lease book.	*Page of order book.*		
	398	Ray & Co. ---------- Jan.	4, '82
H, 21	409	Kuhn ----------	18,
457	418	Hardie & Amos ----------	30,
G, 131	441	Ballard ---------- Feb'y	17,
H, 69	443	McBride ----------	20,

Feb'y 27, '82, to June 1, '83.

H, 77	19	British Columbia Ex. Co. (McGerr & Davis) ---------- M'ch	14, '82
H, 75	30	Tullmann ----------	28,
H, 81	38	Crothers ---------- Ap'l	3,
	40	Hecht ----------	5,
H, 86	61	Bryson ----------	26,
H, 93	70	Demartini ---------- May	4,
	72	Pashburg ----------	5,
A, 97	90	Frankel ----------	22,
H, 84	80	Horn & Co. ---------- May	12, '82
	93	Ketchum & Co. ----------	26,
H, 98	94	Hooper, T. B. ----------	26,
H, 102	100	Meagher ---------- June	1,
	107	Hooper, W. B. & Co. ----------	10,
H, 107	109	Roche ----------	13,
Not. H, 112	111	Hodge ----------	14,
	130	Ruhmann ---------- July	6,
H, 118	138	Bernhard ----------	15,
188	141	Murphy & Brown ----------	19,
H, 125	142	Insley ----------	19,
Not. H, 131	168	Vinson & Watson, 4 ----------	18,
G, 141	181	Gerken, 2 R. ---------- Aug.	30,
H, 106	201	Durner ---------- Sept.	20,
H, 126	209	Thompson & Kirkman, 2 ----------	26,
H, 43	210	Montague ----------	26,
H, 57	238	Walton ---------- Oct.	23,
H, 139	247	Bacquie, 2 ---------- Nov.	3,
H, 46	249	Hunt & Co. ----------	4,
	250	Brunn ----------	4,
H, 127	260	Hughes ----------	18,
H, 92	262	Purdy ----------	20,
Not. H, 143	267	Hearty ----------	27,
I, 3	267	Starke & Benjamin, 2 ----------	27,
	273	Grisinger ---------- Dec.	7,
H, 94	279	Mitchell & Whaley ----------	14,
	300	Sroufe & McCrum ---------- Jan.	13,
I, 13	316	Schroder, 2 ---------- Feb'y	5, '83
H, 141	326	Mueller ----------	13,
I, 10	346	Ban & Fox, R. ---------- M'ch	7,
	347	Smith ----------	7,
Not. H, 79	356	Phillips ----------	17,
	358	Byrnes, 3 R. ----------	19,

Lease book.	Page of order book.			
I, 12	368	Potter		27,
I, 22	379	De Bow (Wren, Priesker & Wren)	Ap'l	5,
	381	Merritt, R.		6,
	400	O'Connor		23,
I, 30	407	Roberts & McCarthy		27,
189 I, 9	414	George	May	3,
H, 78	416	Timony		5,
I, 28	426	Fetters & Williams		12,
I, 35	445	Edmonds		29,

June 1, '83 to May 8, '84.

I, 36	1	Wolf & Clapp	June	1, '83
	21	Merrill		11,
I, 45	22	Grimmer		11,
I, 46	23	Goff		11,
	28	Wonnacott & Glass		14,
I, 41	37	Stoneman, Levy & Co.		20,
Not. I, 55	38?	Swaggart		21,
	43	Rumpf		25,
I, 46	55	Phillips	July	9,
I, 56	62	Hoskins & Potts		17,
I, 44	64	Choate		19,
	78	Skidmore	July	28, '83
	82	Trimmer		30,
Not. I, 15	101	Lange	Aug.	15,
I, 65	107	Henrick & Look		21,
	116	Myres		28,
I, 71	133	Willis	Sept.	14,
	135	Gray		14,
I, 89	194	Varcoe	Nov.	1,
	216	Zumwald & Fitzpatrick		20,
I, 96	223	Young		26,
	269	Orr	Jan.	14, '84
	278	Olcese & Garibaldi		21,
190 J, 3	304	Gardner	Feb.	7,
Not. J, 2	306	Dickinson		8,
J, 5	309	Trask		11,
Not. J, 6	312	Diaz		13,
J, 9	328	Shoenmake	M'ch	1,
J, 25	337	Brown		8,
J, 14	357	Badgley		22,
	365	True & Carlin		26,
	372	Wren		31,
J, 18	377	Hornlein Bros.	Ap'l	2,
Not. J, 24	414	Jones & Raser		19,
	417	Kloker		21,
	418	Bell		28,

After May 10, '84, Tuesdays, Thursdays, Saturdays.

Lease book.	*Page of order book.*		
	9	Lane & Rogers	May 24, '84
	102	Bonchearat & Camusa	Oct. 18,

Mondays, Wednesdays, Fridays.

	14	Peterson	May 26, '84
	55	Ballard	July 16,

In lease books only.

C, 25		Bragdon	Ap'l 4, '76
G, 2		Sherman, 2	Ap'l 19, '82
G, 44		Caprasecca	11,
H, 63		Caprasecca, 2	Feb'y 2,

191 NOTE.—Of the 78 revolving cue racks included in the account Exhibit A, 59 only appear entered upon the order books. Adding that number 59 to the number of such racks called for in the entries which seem to have been falsified, to wit, 283, the total number of revolving racks found to have been sold by complainant is 342.

In many cases where it has here been concluded that entries in the order books have been falsified it appears doubtful whether or not such is the case, but the appearance of the entries in such cases is considered as raising a sufficient presumption that the entries have been changed, to put respondent upon proof to the contrary.

In a few doubtful cases of the kind above referred to no revolving racks are calculated to have been sold.

Some of the entries of sales in which revolving racks are included are marked "Not shipped," "Cancelled," "Annulled," "Null," "Returned," etc. In the case of many of these entries so pur-
192 porting to be cancelled the entries of revolving cue racks have been falsified, which would not seem to have been thought necessary if the racks were not really sold and delivered, and, of course, it would be no more difficult to make entries as cancelled than to falsify entries in the manner shown throughout the books. In the cases last referred to the revolving racks are included in the above account, throwing upon respondent the burden of proving that the racks were not delivered or were returned.

(Endorsed:) Filed February 1, 1886. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

193 *Respondent's Exceptions to Master's Report.*

In the U. S. Circuit Court, District of California.

E. BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Respondent. } No. 2468.

Now comes the respondent in the above-entitled suit and excepts

to the report of the master filed therein on the first day of February, 1886, and assigns the following grounds of exceptions:

I.

For that the said master in his said report has found that the number of infringing cue racks made and sold by the defendant was two hundred and ninety-four, while the evidence shows that the number did not exceed eighty-five.

II.

For that the master has found that the defendant realized a profit of four dollars upon each one of said revolving cue racks, whereas the evidence shows that no gains or profits at all were made
194 or realized by the defendant, or if any gains or profits were made by the defendant on the said cue racks it was only a very small part of four dollars on each cue rack.

III.

For that the master has assumed to decide the amount of gains and profits upon a portion of the testimony of one witness (Imhaus) alone, and avers in his report that said evidence is uncontradicted, whereas the said evidence is contradicted and the same is overcome by a large amount of preponderating adverse testimony.

M. A. WHEATON,
Solicitor for Respondent.

(Endorsed:) Filed 27 Feb'y, 1886. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

195 *Complainant's Exceptions to Master's Report.*

In the Circuit Court of the United States, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

Exceptions taken by the said complainant to the report of S. C. Houghton, Esq., standing master of this honorable court, to whom this cause stands referred to take an accounting in accordance with the findings and instructions in the interlocutory decree filed.

First exception. For that the said master has, in and by his said report, certified that complainant has failed to prove an established royalty, whereas the said master ought to have certified that complainant had proven an established royalty of five dollars on each of his patented cue racks.

Second exception. For that the said master has, in and by his said report, certified that the average profit of respondent
196 upon each of the 294 revolving cue racks sold by him as aforesaid is therefore concluded to have been four dollars,

whereas said master should have reported that the average profit was six dollars for each of the said cue racks.

Third exception. In one part of his report said master admits that 147 cue racks were made for and delivered to respondent by different parties at different prices, at a total cost to him of $797, an average cost of $5.42 each, and adds: "This sum is undoubtedly in excess of the average cost of the racks to respondent as delivered, etc.;" yet said master finds the cost of said racks to respondent to be six dollars each.

Fourth exception. In that said master settled upon the uniform selling price of ten dollars each for the said cue racks, whereas it was shown in the evidence that much of the time the price
197 was much higher, and that $10 each was the lowest selling price ever charged by defendant.

Fifth exception. In that the said master reports: "It is manifest from the evidence that the sum (meaning eleven hundred and seventy-six dollars) does not fairly represent respondent's entire profits upon his unlawful sales of these racks, but it devolves upon complainant to prove the amount to which he is entitled by reason of respondent's infringement, and no more than the amount named has been proved."

Respectfully submitted.

JNO. L. BOONE,
Solicitor for Complainant.

(Endorsed:) Service and receipt of a copy of within exceptions admitted this 10th day of March, 1886. M. A. Wheaton, attorney for defendant. Filed March 10th, 1886. L. S. B. Sawyer, clerk, by F. D. Moncton, dep'y cl'k.

198 *Order Overruling Exceptions to Master's Report and Confirming said Report.*

At a stated term, to wit, the February term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 17th day of May, in the year of our Lord one thousand eight hundred and eighty-six.

Present: the Honorable Lorenzo Sawyer, circuit judge; the Honorable George M. Sabin, U. S. district judge for the district of Nevada.

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN. } No. 2468.

This cause, heretofore argued and submitted to the court for consideration and decision upon the complainant's and respondent's exceptions to the master's report herein, having been duly consid-

ered, it is ordered that said complainant's and respondent's
199 exceptions respectively be, and they hereby are, overruled.
It is further ordered that said master's report be, and the same hereby is, confirmed, and that a final decree be filed and entered herein in accordance therewith.

(Endorsed.)

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

[SEAL.] Attest my hand and the seal of said circuit court this 27th day of May, A. D. 1886.

L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON, *Deputy Clerk*.

200 *Enrollment.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
FERDINAND DE ST. GERMAIN, Respondent. } No. 2468.

The complainant filed his bill of complaint herein on the 25th day of October, 1880, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued, returnable on the first Monday of December, A. D. 1880, which is hereto annexed. The respondent appeared herein on the 6th day of December, 1880, by Wheaton & Scrivner, Esqs., his solicitors. On the 16th day of February, 1881, a demurrer was filed herein, which is hereto annexed. On the 4th day of April, 1881, a notice was filed herein, which is hereto annexed. On the 19th day of September, 1881, an order overruling said demurrer was made and entered herein, a certified copy of which order is hereto annexed.

201 An answer was filed herein on the 3d day — October, 1881, which is hereto annexed.

On the 7th day of November, 1881, a replication to said answer was filed herein, which replication is hereto annexed. An interlocutory decree was filed and entered herein on the 12th day of May, 1884, and the cause referred to S. C. Houghton, Esq., the standing master in chancery of this court. Said interlocutory decree is hereunto annexed.

On the 1st day of February, 1886, the said master filed his report herein, which is hereto annexed. On the 27th day of February, 1886, defendant's exceptions to said master's report were filed herein, which exceptions are hereto annexed. Complainant's exceptions to said master's report were filed herein on the 10th day of March, 1886, and are hereto annexed. On the 17th day of May,

1886, an order overruling, &c., said exceptions was made and entered herein; a certified copy of which order is hereto annexed.

202 Thereafter a final decree was filed and entered herein in the words and figures following, to wit:

Final Decree.

In the Circuit Court of the United States, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant. } No. 2468.

This cause having heretofore been heard on the pleadings, proofs, and arguments of the counsel for the respective parties, and the court, after consideration thereof, having, by an interlocutory decree herein filed and recorded, ordered, adjudged, and decreed that the letters patent No. 72969 set out in the bill of complaint was good and valid in law, and that the respondent herein had infringed upon the exclusive right, privilege, and license of the said complainant by making and selling revolving billiard-cue racks in viola-
203 tion of said complainant's rights under the said letters patent set out in the bill of complaint on file herein, and in and by said interlocutory decree did refer the said matter to S. C. Houghton, Esq., the standing master in chancery of this court, to take and state and report to this court the profits, gains, and advantages which the said defendant has made by reason of said infringement upon complainant's said rights—

And said master having reported to this court that he finds the profits received by said respondent by reason of said infringement to be the sum of $——, and the court having, on appeal therefrom, confirmed said report:

Now, therefore, it is finally ordered, adjudged, and decreed and the court doth hereby order, adjudge, and decree that the complainant do have and recover from the said respondent the said sum of $1,100.76, with interest thereon at the rate of seven per cent. per annum from the 5th day of May, 1884, together with the
204 costs to be taxed in said cause, and that execution issue against the said respondent for said amount.

GEO. M. SABIN,
Dist. Judge, Dist. of Nevada, Holding said Circuit Court.

(Endorsed:) Filed and entered May 27, 1886. L. S. B. Sawyer, clerk.

205 SCHEDULE A.

Names of Witnesses Subpœnaed and in Attendance One Day Each.

(1.) William Heney.
(2.) A. F. Knorp.
(3.) Jacob Mell.
(4.) James G. Blair.
5. James Hatch.

SCHEDULE B.

Names of Witnesses Examined.

(1.) E. Brunswick.
(2.) E. Levy.
(3.) F. Dreypolcher.
(4.) Timothy Fields.
(5.) Louis Eckert.
(6.) F. de St. Germain.
(7.) John B. Felle.
(8.) P. Liesenfeld.
(9.) Felix O'Neil.
(10.) F. de St. Germain (re-ex.)
(11.) William Heney.
(12.) A. F. Knorp.
(13.) Jacob Mell.
(14.) James G. Blair.
(15.) James Hatch.

206 *Memorandum of Costs.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

EMANUEL BRUNSWICK, Plaintiff, *vs.* F. DE ST. GERMAIN, Defendant. } Memorandum of Costs and Disbursements.

Disbursements:

Marshal's fees	$13 60,	taxed.
Clerk's fees	55 65,	"
Witness' fees, five witnesses, one day each, Schedule A	7 50,	"
Examiner's fees, taking and transcribing testimony	56 60,	"
Master's fees on the accounting	811 00,	not in.
Docket fee, attorneys	20 00,	taxed.
Examining 15 witnesses, as per Schedule B, @ 2.50 each	37 50,	do.
Copy testimony on reference for accounting	25 00,	disal.
Copies deposition, paid Apr. 29, '82, and July 14, '82	23 00,	do.
	$1,049 85	
Oath to cost bill	25	
	$1,050 10	

207 UNITED STATES OF AMERICA, }
District of California, City and County of San Francisco, } ss:

John S. Boone, being duly sworn, deposes and says that he is the solicitor for the complainant in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than the said complainant; that the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

JOHN L. BOONE.

Subscribed and sworn to before me this 19 day of May, A. D. 1886.

F. D. MONCKTON,
Commissioner of U. S. Circuit Court, &c.

208 To M. A. Wheaton, Esq., solicitor for defendant:

You will please take notice that on Friday, the 21st day of May, A. D. 1886, at the hour of 10 o'clock a. m., I will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed, pursuant to the rule of said court in such case made and provided.

JOHN L. BOONE,
Attorney for Complainant.

(Endorsed:) Served May 19th, 1886. M. A. Wheaton, att'y for def'ts. Appeal from taxation, or rather from refusal to tax, master's fees continued to 10 a. m., July 13th. L. S. B. Sawyer, clerk. Filed this 19th day of May, A. D. 1886. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

209 Whereupon said pleadings, subpœna, certified copies of orders, interlocutory decree, master's report, exceptions, and final decree are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, &c.:

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

(Endorsed:) Enrolled papers. Filed May 27th, 1886. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

210 *Stipulation Retaining John L. Boone as Associate Att'y.*

In the United States Circuit Court, District of California.

EMANUEL BRUNSWICK, Complainant, }
vs.
F. DE ST. GERMAIN, Respondents. }

Whereas John L. Boone has been retained by the complainants as associate attorney in the above-entitled case, it is hereby stipu-

lated and agreed by the counsel in said case that John L. Boone be entered as attorney for plaintiff and Messrs. Rothschild & Marks as counsel.

JOHN L. BOONE.
ROTHCHILD & MARX.

Endorsed: Filed 11th Jan'y, 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

211 *Caption to Depositions.*

U. S. Circuit Court, District of California.

EMANUEL BRUNSWICK
v.
FERDINAND DE ST. GERMAIN. } 2468.

Depositions of witnesses for complainant.

Brunswick, 2; cross, 5; re-ex'n, 25; recross, 30.
Imhaus, 32; cross, 35.

For respondent.

St. Germain, 45; cross, 53.

In the Circuit Circuit [Court] of the United States, District of California.

EMANUEL BRUNSWICK
v.
FERDINAND DE ST. GERMAIN.

212 Be it remembered that on the several days hereinafter set forth, at my office, in the city and county of San Francisco, State of California, before me, Joseph F. O'Beirne, an examiner in chancery, duly appointed by the circuit court of the United States for the ninth circuit and district of California, personally appeared the several witnesses hereinafter named.

J. L. Boone, Esquire, appeared as solicitor for complainant and M. A. Wheaton, Esquire, as solicitor for the respondent.

Following is a record of the proceedings:

Testimony of Emanuel Brunswick.

SATURDAY, *February* 25, 1882.

Present: Mr. Boone, solicitor for complainant; Mr. Wheaton, solicitor for respondent.

213 Examination-in-chief of EMANUEL BRUNSWICK, a witness on behalf of complainant, by Mr. BOONE:

Q. 1. State your name, age, residence, and place of occupation.

A. My name is Emanuel Brunswick; my age, 46 years; I live in San Francisco, and I am the manager of the San Francisco house of the J. M. Brunswick & Blake Co. billiard-table manufacturers.

(Complainant puts in evidence a certified copy of letters patent number 72969, issued to Emanuel Brunswick, of Chicago, Illinois, on the 7th day of January, 1868, for improved billiard-cue rack.

Respondent consents that a Patent Office printed copy of the specification and drawings of the patent referred to may be substituted in the place of the certified copy now offered and said certified copy withdrawn. Said letters patent are marked, Complainant's Exhibit A).

214 Q. 2. Are you the party to whom letters patent, Exhibit A, were issued?

A. I am.

(Complainant puts in evidence full-size model of the invention described and claimed in the patent, Exhibit "A," marked Complainant's Exhibit B.)

Q. 3. Now please take the patent, Exhibit "A," and, referring to the model, Exhibit "B," describe your invention. First describe how billiard cues were held in racks before the date of this invention.

A. The billiard cues were put stationary against the wall into racks against the wall, fixed to the wall.

Q. 4. Describe your invention.

A. This (model, Exhibit B) has two circular plates, with a bar in the center which projects at each end, with a pivot at each end on which the rack revolves. Then the rack can be turned so
215 that you can get at any cue you want, and then it does not take up so much room. It is pivoted on pivot ends, top and bottom.

Q. 5. What particular advantage is there in having the cues supported in a stand of that character?

A. It is a great deal handier, because you can just revolve the rack and take out a cue, and it don't take up so much room—don't fill up the walls.

Q. 6. Is that any particular advantage or very desirable?

A. A very desirable advantage.

Q. 7. State what these arms are which project from the bottom part of the rack.

A. This is to keep the cues in their places so that they can't fall down; to separate the cues.

Q. 8. What is this arm around the bottom plate?

A. This is so the cue don't slip down.

Q. 9. How is this cue rack supported?

A. It is supported by two brackets, one on top and one on the bottom.

216 Q. 10. What are the brackets attached to?

A. They are secured onto the wall.

Q. 11. Now state how extensively this cue rack has gone into use.

A. I have used them to a very large extent all through the United States. They are generally used. At one time there was hardly any other cue rack sold.

Q. 12. Were you a party to the suit entitled Emanuel Brunswick *vs.* J. M. Brunswick *et al.*, which was tried in the United States circuit court for the seventh judicial circuit, State of Illinois, before Judge Blodgett?

A. I was the plaintiff in that suit.

Q. 13. Was that a friendly suit or not?

A. It was no friendly suit, because they then was opposition firms. I was for myself and J. M. Brunswick and Balke was for themselves.

Q. 14. Was that case compromised before the decision?

A. It was not. The judge gave the decision in the court,
217 granting me the patent.

Mr. BOONE: We reserve the right to introduce in evidence the judgment-roll in the case just referred to and to recall Mr. Brunswick in connection with that matter, if we desire to do so.

Cross-examination of EMANUEL BRUNSWICK by Mr. WHEATON:

Q. 1. How long have you been agent for the J. M. Brunswick and Balke Company?

A. Commenced May; it will be two years, their manager here.

Q. 2. What different operation is there about this cue rack from the operation of an ordinary revolving table castor, such as has been in use for the last twenty years, in which the different bottles containing vinegar, pepper, oil, mustard, and so forth are brought into any desired position by revolving the disk on which they are set?

218 A. A castor runs on an axle like a wheel does, but this here is supported at the top and bottom by a bracket, and the castor is not; it revolves on its own axle the same as a wheel does on its axle, and not on pivots supported by brackets, as this (model, Exhibit B) does.

Q. 3. The brackets are merely the standards or supports, are they not, of the revolving cue rack?

A. They contain sockets at the top and bottom to support the rack.

Q. 4. What you have mentioned is the difference in construction between this revolving cue rack and the ordinary table castor, is it not?

A. The castor revolves in the center the same as a wheel does on its axle, and this (model, Exhibit B) revolves at the top and bottom on pivots.

Q. 5. My question did not refer to the difference in the construction of the two articles, but to the operation of their revolving,
219 the work performed by each in revolving. Is there any difference in the operation of the two devices in respect to the

work that they do—that is to say, does not each one by revolving bring the article that is upon its side around in a convenient position to be taken off?

A. I suppose it does.

Q. 6. Does either of the two articles referred to, the table castor or this revolving cue rack, do anything else except to carry the articles on them around into convenient positions to be taken off?

A. This cue rack does more. The castor stands in the center of the table and revolves in a hollow without any pivots; the pivot runs clear through, while this (cue rack, Exhibit B) is screwed onto the wall out of the way, and revolves on two brackets.

Q. 7. That is, one of the articles named is used on the table and the other on the wall, is it?

220 A. No; the cue rack is screwed upon two brackets against the wall—a different thing entirely.

Q. Do you consider that a revolving cue rack which stood upon the floor would be a different thing from this rack, which you have described in your patent as being hung by brackets on the wall?

A. It would be a different thing entirely.

Q. 9. Then, the mere fact of making a cue rack to revolve you do not consider an invention, do you?

A. It may be an invention, for all I know. Some might call it an invention, but I wouldn't.

Q. 10. What is the fact, so far as your making of this cue rack is concerned; do you think the mere fact of making it to revolve an invention or not?

A. I call it an invention, certainly.

Q. 11. To make it revolve?

A. Yes, sir.

221 Q. 12. Then if it stood upon a floor, just as a table castor stands upon a table, you would consider it an invention, would you?

A. You could not stand a rack like that on the floor and make it revolve unless it was on wheels, and then it would not revolve easy; you couldn't make it revolve hardly; you can't make it revolve on the floor.

Q. 13. Suppose the shaft of that cue rack was bored from the bottom up through to the top and a standard, with a cast-iron bottom heavy enough to hold it steady, and a round iron passed up through the centre, with a shoulder at the bottom to hold the rack clear from the bottom, so that it would turn easily, would that make a revolving cue rack operating the same as yours does, so far as holding the cues and carrying them around is concerned?

222 (Objected to by complainant as hypothetical and as calling for the opinion of the witness as to a matter concerning which he is not shown to be an expert.)

A. It would revolve very hard indeed; you could not make it hardly revolve unless there was wheels underneath which would make it turn around.

Q. 14. Have you not seen these revolving book-cases, which are in a great many lawyers' offices now, in which the entire case is revolved upon a center shaft constructed something as I have described, in which at least two hundred pounds of books are easily revolved?

A. I have not. I may have seen some.

Q. 15. How much will the revolving part of that rack when loaded with cues weigh?

A. I really could not tell you that. I suppose it will weigh, with cues and everything, about thirty-five or forty pounds. I could not say exactly.

223 Q. 16. You say that your revolving cue rack takes up less room than the ordinary cue rack which is placed against a flat wall?

A. It takes a great deal less.

Q. 17. How much space lengthwise in an ordinary cue rack does a cue occupy, counting the place occupied by the cue itself and also the space between that cue and the next one?

A. Two cues occupy about five inches average, more or less; I could not say exactly.

Q. 18. Can the holes be placed any nearer together in the top of your cue rack than in an ordinary cue rack?

A. Not to make them handy to get out.

Q. 19. Do not the cues at the upper end of the cue rack, Exhibit B, when it is filled with cues, occupy as much room going around in a circle as the same number of cues would in a straight line?

224 A. I suppose they would; I suppose they would.

Q. 20. In order to have your revolving cue rack, is there not a large space included in the circle on the inside of the tier of cues when they are in the revolving cue rack?

A. No; no more than there is necessary to place twelve cues in the rack.

Q. 20½. Is it not necessary that there should be a space left there for the cues to go around in order to form a revolving rack?

A. Of course, to place twelve cues around you have got to have a space in the centre.

Q. 21. Is not that so much space wasted, as compared with the space occupied by a straight cue rack which is not in a circle?

A. No, sir; I can explain to you why.

Q. 22. Please do it.

A. A cue rack placed on the wall will take up two and a half to three feet, while this (cue rack, Exhibit B) only takes

225 one foot. An ordinary cue rack, four or five will take up a whole wall, while this only takes up one foot of the whole wall in width.

Q. 23. What are the width and thickness of an ordinary cue rack for holding fourteen cues?

A. The length along the wall, from two and a half to three feet; some are more, some may be a little less.

Q. 24. What is the width from the wall in front?

A. About four to five inches; about four inches, I suppose.

Q. 25. Then the space occupied by an ordinary cue rack would be a superficial area of from thirty to thirty-six inches in length by four inches in depth, would it?

A. Four inches in depth; yes, sir.

Q. 26. That would be from one hundred and twenty to one hundred and forty-four square inches of space that it would occupy?

A. I did not figure it out; I suppose that is right. This
226 (revolving cue rack, Exhibit B) only takes up one foot.

Q. 27. What is the diameter across the lower disk of the cue rack, Exhibit B?

A. Twelve inches and the top about eleven inches.

Q. 28. Then that has to be far enough from the wall to swing clear of the wall?

A. It is in brackets or pivots; it comes out from the wall.

Q. 29. How far from the wall is the centre of the pivot in the cue rack, Exhibit B?

A. Nine inches.

Q. 30. Then what is the distance from the centre of the pivot to the outside of that disc, farther from the wall?

A. Six inches.

Q. 31. That makes fifteen inches in depth from the wall out?

A. Yes, sir.

Q. 32. And it occupies a space twelve inches in width along the wall?

A. Yes, sir.

227 Q. 33. That makes one hundred and eighty square inches of space occupied, taken up by your revolving cue rack?

A. I did not figure it; I suppose it is right.

Q. 34. It is fifteen inches in depth, is it not, from the wall to the outside of the disc?

A. Yes, sir.

Q. 35. And it is twelve inches in width?

A. Yes, sir.

Q. 36. Fifteen multiplied by twelve makes one hundred and eighty, does it not?

A. Yes, sir.

Q. 37. Then this revolving cue rack of yours will occupy from thirty-six to sixty square inches more space than the ordinary cue rack?

A. It will not. The old-style cue rack against the wall takes up three feet by six of the wall, at least, if not more.

Q. 38. An ordinary rack only takes up as much of the perpendicular distance on the wall as the length of the cues, with about
228 three inches over, does it?

A. About that. There is generally an ornamental top to it also.

Q. 39. What is the distance from the centre of one of the holes at the top of your rack and the centre of the next?

A. That would be about an inch and three-quarters.

Q. 40. Are they not about the same distance apart that cues are placed in an ordinary cue rack?

A. Yes, sir; just the same—just about the same.

Q. 41. Then an ordinary cue rack that would hold fourteen cues would be only about twenty-eight inches across; that would be two inches for each cue?

A. You have got to figure the outside ornaments.

Q. 42. Those ornaments are not a necessity, are they?

A. Yes, sir; you could not fasten a rack to the wall without them. The outside beyond the cues may extend four inches farther from each side.

Q. 43. Which takes up the more perpendicular height, an ordinary cue rack, counting all of the bottom and the ornamental work at the top, or your cue rack, counting from the bottom of the lower bracket?

A. I suppose the revolving cue rack would take more room.

Q. 44. Where have you ever known an instance in which there was any difficulty in finding plenty of room for the cue racks on the wall of a billiard saloon?

A. A great many instances. I met one here only three weeks ago.

Q. 45. Where was that?

A. At Mr. Brown's house, a private residence here. He bought a handsome table from me and I wanted to give him a handsome rack. He had a revolving rack, had no room for a wall rack, and he had to leave the revolving rack in there.

Q. 46. Where is that?

A. 920 Pine street, J. W. Brown's private residence. There are a great many more cases like that. The Palace Hotel is another case. They didn't have room on the wall to spare, and they put these revolving racks in, although I didn't put them in; beside, these revolving racks will go into a corner where it is impossible to put the ordinary rack.

Q. 47. Why is not the cue rack, Exhibit B, made like the cue rack represented in the patent and with an arrangement at the bottom from [for] locking the cues?

A. We have got them both private and not.

Q. 48. Why have you not put in evidence one which contains the boxes for locking in the cues which are shown in the patent?

A. I have got them here in the city, so I did not know it was necessary to bring one down.

Q. 49. Why have you not produced one and put it in evidence?

A. I did not know it was necessary. I will bring one down.

Q. 50. Was not the reason that you produced one without the boxes for locking the cues because you knew that the defendants had never had any with the boxes for locking on the billiard cues?

A. I don't know if they have had any or not. I could not say.

Q. 51. Were the ordinary cue racks made with a ledge along the front of the lower part on which the cues stood so as to prevent the cues from slipping off?

A. Some may be, some are not.

Q. 52. Were a great many of them made that way long before you made the revolving cue rack, to your knowledge?

A. To my knowledge there may have been some made.

Q. 53. Were those cue racks made with the upper part
232 perforated with holes so that the upper ends of the cues could pass up through one of those holes when the cue was put in the rack?

A. The ordinary straight cue racks with holes in the top; yes, sir.

Q. 54. Then, so far as holding the cues is concerned, does that revolving cue rack hold the cues in the same way and by the same means as the ordinary cue racks used to hold them?

A. Just the same.

Q. 55. With reference to the putting of the cues into the cue rack and the holding of them there, it is the same as it was in the ordinary old cue rack?

A. Just the same.

Q. 56. Does the revolving cue rack do anything that the straight cue rack does not do, except to bring the cues around as the cue rack is revolved?

233 A. It brings the cues around to you and takes up much less room, and it is an ornament to the room.

Q. 57. Were not a great many of the old style of cue racks made very ornamental?

A. Some are.

Q. 58. Were they not, some of them, made quite as ornamental as the revolving cue racks are made?

A. Well, well, they cost a great deal more money.

Q. 59. That is not the question.

A. Not when these were made first.

Q. 60. Not when which were made first?

A. Not when the revolving cue racks were first made.

Q. 61. When the revolving cue racks were first made were they — ornamental than they are now?

A. The revolving cue racks just the same.

Q. 62. Why is it possible to make the revolving cue racks
234 any more ornamental than it is the straight cue racks?

A. It is a new thing or new novelty, and an ordinary cue rack is often a mere straight piece of wood at the top and bottom.

Q. 63. Have you not seen the straight cue racks twenty years ago that were made and finished in black walnut or rosewood, carved, varnished, and made as ornamental and as handsome as you have ever seen the revolving cue racks?

A. I have seen very handsome cue racks made in the old style, carved racks, varnished, and a great deal more expensive than these revolving cue racks.

By Mr. BOONE:

Q. 64. The question is were they as ornamental as these?

A. In my estimation, they were not.

By Mr. WHEATON:

Q. 65. When was the time when there were hardly any cue racks sold except the revolving cue racks?

235 A. In the East, in our house in Chicago, for four or five years; J. W. Balk and myself seldom sold anything else; they were all the go.

Q. 66. Were there more sold then than have been sold since?

A. They are making as many of them in the East to-day.

Q. 67. Was there a larger proportion of the revolving cue racks sold then than there is now?

A. I suppose there is as many of them sold to day, if not more.

Q. 68. How is it with your own trade here? Have you sold the last two years more of the revolving cue racks than you have of the straight cue racks?

A. The reason we have sold more of the other kind is because of new styles of racks that we have got out lately.

Q. 69. By "the other kind" what do you mean?

A. We have got other kinds of racks out which are very ornamental, which have sold more lately than the others—than the revolving racks.

236 Q. 70. By "the other kind" do you mean straight racks?

A. They are not exactly straight; they are straight in one respect, and they are very ornamental.

Q. 71. By straight I mean the line of holes straight in which to put the cues.

A. The line of holes is straight.

Q. 72. Since a year ago last May have you sold as many cue racks that revolved as you have sold of cue racks that did not revolve?

A. We have not.

Q. 73. What proportion of the cue racks which you have sold since a year ago last May have been revolving cue racks?

A. I really could not tell you unless I should look over my books.

Q. 74. About what proportion, as near as you can judge?

A. I suppose we have sold about three to one.

Q. 75. Three of those which did not revolve to one that did revolve?

237 A. Yes, sir. In the first place we haven't had them out here; we had none out here until within the last six months, and had to sell the others what we had.

Q. 76. As your patent is over fourteen years old, if these revolving cue racks were such a good thing, why did you not have them out here for sale during the first year that you were in business?

(Objected to by complainant as immaterial.)

A. Well, they had not time to manufacture them in the East; they was so busy with other work that they couldn't get them out for us; they used them all at the East.

Q. 77. Do you really mean to say that you could not — them manufactured?

A. They were so pushed with work that even other things they sent us out just what they could spare. They had just built
238 up a new factory—a larger factory—and they could not get out goods fast enough as we wanted them. They are way behind now in all kinds of goods, not only with revolving racks, but everything else.

Q. 78. Have you ever been short of the cue racks that did not revolve since you have been in business here?

A. Some kinds we were.

Q. 79. Which cost the most to manufacture, the revolving cue racks or the other kind?

A. The expense is about the same.

Q. 80. It depends very much on how much ornamental work you put on them, does it not, as to which costs the more?

A. Ordinary cue racks cost about the same as the revolving cue racks. Of course, the more ornamental work they put on, the more money it costs.

Q. 81. Which cue racks have you sold at the highest prices during the last six months, cue racks that revolve or cue racks
239 that did not revolve. I have reference now to the highest-priced ones. Take your highest-priced revolving cue racks and the highest priced of those that do not revolve, and which have you sold at the highest price?

A. The expense—the selling price—is about the same thing.

Q. 82. What has been the highest price at which you have sold revolving cue racks since you have been managing agent of the J. M. Brunswick and Balke Company, at San Francisco?

A. The cue rack generally belongs to the table—part of the fixture of the table—and are seldom sold by themselves.

Q. 83. Have you never sold revolving cue racks by themselves?

A. Since I am out here, I have not.

Q. 84. Have you ever, since you have been out here, sold cue racks that did not revolve by themselves?

A. Yes, sir—that is, private cue racks, lock, and key.

240 Q. 85. How long have you known of those private cue racks, with boxes fixed for lock and key, which did not revolve?

A. A good many years—a great many years.

Q. 86. Did you know of them before you made the revolving cue racks or not?

A. Yes, sir; I did.

Re-examination of EMANUEL BRUNSWICK by Mr. BOONE:

Q. 1. What device in the revolving cue rack, when it is filled with cues, would correspond with the bottle in a table castor?

A. Well, a cue, when it is in the revolving cue rack, rests on the bottom and runs through the hole on top.

Q. 2. The question is, what device in the revolving cue rack, when it is full of cues, represents the bottle in the castor?

A. I don't understand exactly what you mean by it.

241 Q. 3. In a castor the thing to be taken out is a bottle, is it not?

A. Yes, sir.

Q. 4. What is it in the cue rack?

A. The cue.

Q. 5. Now, how is the bottle in a castor supported?

A. The bottle sets in the ring in the castor; it is surrounded by a rim that the bottle sets in. The cue is supported by that plate at the bottom and runs through the plate at the top.

Q. 6. In that respect, then, your cue rack differs from the table castor?

A. It is a different thing entirely.

Q. 7. In a table castor what is it that revolves?

A. It is the whole stand where the glass sets in, glass and all; the stand revolves.

Q. 8. What do you mean by the stand?

A. The ring.

Q. 9. In your cue rack what is it that revolves?

A. The whole cue rack excepting the brackets.

242 Q. 10. Would it be practicable to make a cue rack like a table castor and support the cues in the same manner that the bottles are supported in a castor?

A. You couldn't do it; it wouldn't be practicable.

Q. 11. At about what height on the wall is the bottom of the cue rack supported?

A. From four foot to four foot and a half; some five feet, maybe.

Q. 12. Why are they supported at that height?

A. So that it comes handy for to take out a cue, just at the right height to take out a cue.

Q. 13. Would a cue rack be practicable if it stood upon the floor?

A. It would not; they would stumble right over it; it would be in the way.

Q. 14. If you had bored a hole through the standard or the center part of the cue rack and run a rod through, as Mr. Wheaton
243 suggested was done in the case of the book-stands, would that be a practical arrangement?

A. It would not.

Q. 15. Tell me why.

A. It would be very hard to revolve; you could hardly turn it.

Q. 16. What would make it hard to turn?

A. It would be hard to turn because it would rest on something below to revolve on, and it could not turn so easy.

Q. 17. Would you not have the friction of that whole rod against the whole inside all the way through the post to overcome?

A. I don't think it would work.

Q. 17. (Repeated.)

A. I don't see how it would revolve.

Q. 18. If there were a rod run right through the center part of this cue rack would not the friction of that rod make it very hard to turn?

A. The friction would make it very hard to turn.

244 Q. 19. If the rod was not tight in the hole in there what would be the result?

A. It would wiggle around.

Q. 20. Would that be objectionable?

A. Yes; and then it would cost a great deal more money to make it.

Q. 21. Prior to your invention, you say, the lock box at the bottom of the cue rack was known?

A. Yes, sir; they even had it locked all the way up.

Q. 22. In your patent do you show both kinds of cue racks?

A. Yes, sir; figure 1 shows one with a box for a lock and key for locking each cue by itself or three cues at once. Figure 3 shows a cue rack open for the public.

Q. 23. Now, supposing we had two cue racks made—one revolving and the other stationary—of the old style, to contain an equal number of cues and with the same ornamentation, which would cost the more?

245 A. I think the old-style one would cost the most. You could not make cue racks of the old style and revolving, with the same ornamentation, because one has got brackets on while the other has not.

Q. 24. One would have to have an extensive frame made?

A. Yes, sir.

Q. 25. And that entire frame would have to be ornamental to be in keeping with the balance?

A. Yes, sir.

Q. 26. And it would cost more than the revolving cue racks?

A. Yes, sir.

Q. 27. How long did you say you had been offering the revolving cue rack to the trade on this coast?

A. Well, I have been offering them on this coast for the last two years; not quite two years; next May it will be two years.

Q. 28. Have your sales of revolving cue racks increased or decreased since you commenced here?

246 A. On the Pacific coast—it is very hard to tell, because we could not get them from the East; could not keep them on hand. We could not get the first ones until about six months ago. They don't have time to make them.

Q. 29. Since you have had them has the trade in them increased or not?

A. Increased.

Recross-examination of EMANUEL BRUNSWICK by Mr. WHEATON:

Q. 1. During the last six months what proportion of the cue racks which you have sold have been revolving cue racks, as near as you can tell without looking at your books?

A. I suppose about one-third would be revolving. I suppose they would be. I couldn't exactly tell without looking at the books.

Q. 2. During the last month what proportion of the cue
247 racks sold by you have been revolving cue racks?

A. I couldn't exactly tell; I suppose one-fifth or one-sixth; I couldn't say. I don't know that we have sold any revolving cue racks in the last month.

Q. 3. How many have you sold that did not revolve?

A. We have sold them with the tables; they went with the tables.

Q. 4. Well, how many was it, as near as you can tell?

A. I can't tell positive; I suppose about, the last month, ten or twelve—twelve or fourteen. I couldn't say exactly outside.

Q. 5. How much does your ordinary common revolving cue rack cost you all ready for use, with brackets and all?

A. About three and a half or four dollars.

Testimony of Louis Imhaus.

Examination-in-chief of LOUIS IMHAUS, a witness on behalf of complainant, by Mr. BOONE:

248 Q. 1. State your name, age, place of residence, and occupation.

A. My name is Louis Imhaus; my age is 34 years; I live in San Francisco, and I am a billiard salesman.

Q. 2. With whom are you engaged at present?

A. The J. M. Brunswick & Balke Company.

Q. 3. How long have you been with them?

A. Since they started; it will be two years on the 1st of May.

Q. 4. By whom were you employed prior to your employment with the J. M. Brunswick & Balke Company?

A. I was with Jacob Strahle & Company, St. Germain.

Q. 5. Who constituted the firm of Jacob Strahle & Company?

A. F. de St. Germain.

Q. 6. Did he at that time?

A. Yes, sir.

Q. 7. What business did you do for him while you were there?

A. I was salesman and most everything—correspondent and
249 book-keeper. Salesman was the occupation that I was employed for.

Q. 8. Do you know whether or not during the time you were employed by St. Germain he sold any revolving billiard-cue racks?

A. Yes, sir.

Q. 9. Did he keep them for sale?

A. Yes, sir.

Q. 10. Do you recognize the revolving cue rack, Exhibit B?

A. Yes, sir; that is the same kind he made and sold.

Q. 11. Do you know where the revolving cue rack, Exhibit B, came from?

A. Yes, sir.

Q. 12. Where?

A. It came from Arthur Edgar, in Berkeley.

Q. 13. Do you know who made and sold the cue rack, Exhibit B?

A. The billiard table, with the appurtenances, was sold to Edgar by Jacob Strahle & Company, and their name was on the table, and he told me he got it from them with the table.

250 Q. 14. You have sold a large number of billiard tables and cue racks in your business, have you?

A. Yes, sir.

Q. 15. Do you know whether or not a revolving cue rack is a desirable machine?

A. Yes, sir; I consider it the best cue rack that is made.

Q. 16. In what respect?

A. Well, because it takes up less room on the wall; it does not spread so much over the wall, and in places, saloons generally, they have pictures and such things around the walls, and when they put these other cue racks in they fill them up so that they can't have pictures, and now with these cue racks you can have a picture on each side. Then a person can turn to each cue, look at the weight of the cue and revolve it round and take whichever cue suits him.

251 I know that they were always more in demand when I was with that house than anything else; the same as when I was with Liesenfeld. I was with him three years and a half, and he then made them, and everybody, whenever they would see them, would buy them in preference to others. We sold ten of these to one of the others. Even when there was room on the walls people preferred those; they looked neater.

Q. 17. Did you not often find places where wall space was limited?

A. Yes, sir; many a place where you could not put in one of the other racks on account of pictures, and also where there was paneling on the walls. If you put up an ordinary cue rack which covers the entire paneling in the wall, if the wall is frescoed or anything of that kind, then the advantage of those is you can put them in corners or small places and leaving the walls clear for pictures or anything you want to put on the wall.

252 Cross-examination of LOUIS IMHAUS by Mr. WHEATON:

Q. 1. When and where were you salesman when you sold ten revolving cue racks to one of any other kind?

A. That was with Liesenfeld.

Q. 2. When was that?

A. That must be six years ago, I guess, prior to opening of the Palace Hotel.

Q. 3. Did he supply the Palace Hotel billiard-room?

A. No; the Brunswick & Balke Company supplied them; that is where they came out from the Eastern States; that is the first time that everybody began to want them and when they commenced manufacturing them. Jacob Strahle & Company also manufactured those revolving cue racks at that time, and then Liesenfeld started in to make them, and the other billiard men started in and

253 made them. In fact, everywhere it was revolving cue racks. Then when I went back, two years ago, I staid fourteen

months with Jacob Strahle & Company, and he was still making them and still selling them, and I could safely say that three-quarters of the billiard tables that were sold from Jacob Strahle & Company were sold with revolving cue racks. They would use them this way: If a billiard table was leaving the house and they had not asked anybody what cue racks they wanted, they invariably put in a revolving cue rack. That was about three years ago, and I was there about fourteen months with them, although I was with them five years before that. I was with them five years and then left them and went with Liesenfeld three years and a half.

Q. 4. What is the reason, if you know, that recently the demand for revolving cue racks has so largely decreased and the cue
254 racks which do not revolve are taken instead?

A. They have not decreased with Jacob Strahle and Company, because they are put in along with every new table that they put in. They put in two new tables on Montgomery avenue lately, opposite the church, and put in revolving cue racks with them. In fact, with all the tables that they put up they put revolving cue racks with them.

Q. 5. How did you know that they put up revolving cue racks on Montgomery avenue?

A. Because I was there in the billiard saloon.

Q. 6. Did you see Jacob Strahle & Company there?

A. Their name was on the tables.

Q. 7. Did you see them put up any cue racks?

A. No, sir; I didn't see them put them up.

Q. 8. Then you are testifying what you don't know?

A. No; I know they furnished the billiard tables there.

255 Q. 9. How do you know that?

A. Because the bill of sale is there. They are buying them on instalments, and the man himself told me that he bought them from them, and I went there to try and make a sale myself.

Q. 10. That is how you know that?

A. Yes, sir.

Q. 11. You did not see Jacob Strahle & Company make them?

A. No, sir.

Q. 12. You did not see them manufacture them, did you?

A. No, sir.

Q. 13. You did not see Jacob Strahle & Company put their name on them, did you?

A. No, sir; they don't put their name on the cue racks.

Q. 14. You did not see Jacob Strahle & Company put their name on the billiard tables, did you?

A. No, sir.

Q. 15. Then do you pretend to come here and testify from your own knowledge when you have no better knowledge than that
256 to testify from?

A. I knew when I was in the house with him that he was making these cue racks and knew that I sold them myself when I was there and furnished them with tables.

Q. 16. When you say that they are selling so many of them recently have you seen them sell a single cue rack of any kind within the last two years?

A. No; I haven't seen them sell them, but a person's saying "I saw them do a certain thing"—I could not say I saw them do it. To the best of my knowledge, I know that the billiard tables and the cue racks have been sold by Jacob Strahle & Company and that they are there.

Q. 17. No one is asking for the best of your knowledge, since you have no knowledge about it.

A. That is all I know about it.

257 Q. 18. All you know about it is from seeing them there, seeing their names on the bills, and because somebody told you they sold them?

A. Yes, sir; the party that kept the saloon told me he bought them from Jacob Strahle & Company.

Q. 19. And from that information you are willing to come here and swear that you know they sold them?

A. I am not willing to swear any nearer than that. I don't know certain whether they sold them or not any nearer than that.

Mr. WHEATON: I move to strike out all the evidence of this witness which is based upon hearsay.

Q. 20. Did you see the cue rack, Exhibit B, sold by Jacob Strahle & Company?

A. I did not, sir.

Q. 21. Did you ever see it in their possession?

258 A. I did not, sir.

Q. 22. Do you know of your own knowledge that Jacob Strahle & Company or St. Germain ever saw it?

A. No, sir.

Q. 23. Do you know that they ever had anything to do with it, of your own knowledge?

A. Do you mean if I personally saw them bring it there and sell it?

Q. 24. Yes.

A. I could not possibly say that, not being in their house.

Q. 25. And yet you have sworn without any hesitation that they sold it, have you not?

A. I know that I got that cue rack from that man, and that it is a *fac-simile* of the cue racks they were manufacturing there when I was there; that they manufactured them there just like that; that the billiard table there was their make, and that the cue rack

259 always goes with a billiard table, and there was no other cue rack but this in use in the place when I took it; but that I myself saw them put it up, I don't say so.

(It is agreed between counsel that the time within which testimony in this case shall be taken is extended to the 25th day of April, 1882.)

(Continued to a day to be agreed upon by counsel.)

THURSDAY, *April* 13, 1882.

Present: Mr. Wheaton, solicitor for respondent.

Further continued by consent until Saturday, 15th instant, at two o'clock p. m.

SATURDAY, *April* 15, 1882.

(Further continued by consent until Friday, 21st instant,
260 at two o'clock p. m.)

FRIDAY, *April* 21, 1882.

Present: Mr. Boone, solicitor for complainant; Mr. Wheaton, solicitor for respondent.

(No witness appearing, the taking of testimony is further continued until Thursday, 27th instant, at eleven o'clock a. m.)

THURSDAY, *April* 27, 1882.

Present: Mr. Boone, solicitor for complainant; Mr. Wheaton, solicitor for respondent.

Exhibit Put in Evidence.

Complainant puts in evidence certified copy from the clerk of the United States circuit court for the northern district of Illinois of the judgment-roll in the case in said court entitled Eman-
261 uel Brunswick *v.* John M. Brunswick, Moses Bensinger, Anton F. Froescher, and Leo Schmidt, marked "Complainant's Exhibit C."

Respondent objects to the introduction of Exhibit C on the ground that it is irrelevant and incompetent evidence as a judgment-roll, for the reason that it contains no decree signed by the judge of the court.

Complainant also puts in evidence letter dated March 11th, 1882, addressed to Boone & Miller, attorneys, San Francisco, and signed W. H. Bradley, clerk of the circuit and district courts of the United States for the northern district of Illinois, marked "Complainant's Exhibit D."

Mr. WHEATON: I object to that on the ground that the letter is not proved to be an original letter; the signature to it is not proved; it is incompetent testimony if it was proved, for the reason
262 that it is mere hearsay, the mere statement of a third party. I also object to it as irrelevant for the reason that it does not apply to any issue in this case and is not quite in accordance with proper practice, which Mr. Boone has so frequently recently declared that he wishes to establish in this court.

Complainant rests, the right being reserved by and to complainant to introduce at any time before the testimony shall be closed, if he so desires, further proof that the respondent has sold revolving cue racks and the character and kind of cue racks so sold by him.

By agreement of the solicitors for the respective parties the time within which testimony may be taken herein is extended sixty days from date.

263 THURSDAY, *June* 15, 1882.

Present: Mr. Boone, solicitor for complainant; Mr. Wheaton and Mr. Harpham, solicitors for respondent.

Respondent puts in evidence a certified copy of United States letters patent number 18042, dated August 25, 1857, granted to Jonathan H. Farrar for improvement in self-waiting tables, marked "Respondent's Exhibit 1."

Respondent also puts in evidence certified copy of United States letters patent number 19773, dated March 30, 1858, granted to G. W. Hagey for improvement in self-waiting tables, marked "Respondent's Exhibit 2."

Also certified copy of United States letters patent number 18740, dated December 1, 1857, granted to E. Gleason for an improvement in revolving bottle castors, marked "Respondent's Exhibit 3."

264 *Testimony of Ferdinand de St. Germain.*

Examination-in-chief of FERDINAND DE ST. GERMAIN on behalf of respondent by Mr. WHEATON:

Q. 1. You are the complainant in this case, are you?

A. Yes, sir.

Q. 2. Are you a practical mechanic?

A. No. I have learned a great deal since twelve years, but I have not studied the business before. I think I am practical now. I can discuss any part of a table or have it made under my orders just as well as if I could make it myself.

Q. 3. Have you examined the specifications of either of the three patents just put in evidence?

A. Yes, sir; of all of them.

Q. 4. Please describe the operation of the so-called self-waiting table described in the patent of George W. Hagey, Exhibit 2.

(Objected to by complainant on the ground the witness is not shown to be an expert.)

265 A. This table is made with a pivot in the center, so that the central part of the table will revolve and bring before each guest any desired plate that may be wished for. As represented here (in drawings of patent, Exhibit 2), it stands on a large pillar in which is an endless screw, on the same principle as a piano stool.

Q. 5. Are the object and operation of the table described in that patent to bring objects that are standing on the table round into any desired position by revolving the table?

(Objected to by complainant as leading.)

A. The main object, of course, is to have the desired object brought into whatever place it is desired to be by simply giving an impulsion to the article.

Q. 6. Please state the object and operation of the table described in the patent to Farrar, Exhibit 1.

266 (Objected to by complainant as incompetent on the ground that it is calling for the opinion of the witness, who has not been proven to be an expert.)

A. It is for about the same intended purpose as the former one, and it is meant to revolve on a pivot, either wood or brass or steel, and to bring round before the person the intended object selected. It is called a self-waiting table, and has a great similarity with other revolving things, either a cane rack or musket rack or cue rack. They are all the same idea and for the same purpose.

Q. 7. Please describe the principle object and operation of the device described in the patent granted to Gleason for an improvement in revolving castors.

(Objected to by complainant as incompetent on the ground that it is calling for the opinion of the witness, who is not proved to be an expert.)

267 A. It is also somewhat for the same purpose and the same intention, but with this addition—that this castor has been made with doors independent of each other and that will open as the castor revolves. It is an old and well-known invention. I have seen it when a boy twelve years old in Paris. In this castor described in the patent, Exhibit 3, however, there is something new, which is a crank, with some kind of a button which you push, I think, and which closes the doors, fastens them, I believe; but the object is the same. In revolving the doors each open separately and distinctly from each other. I have seen what they call French liquor caves, which hold little bottles with liquor in them, for a smoking-room or billiard-room, containing four or five decanters of liquors, on the same principle as that. They open and close of themselves automatically.

Q. 8. How long, to your knowledge, have revolving devices
268 which in revolving carry articles around with them so as to bring any given article into any desired position been known to the world?

A. They have been known in France since I can remember. My father was a jeweller, and had a large store in Paris. He was a jeweller and silversmith, and had a large stock of watches, clocks, and plated goods, and I remember having seen cruets of that kind and all kinds of devices for liquors or for castors and those things in his store before we left France.

Q. 9. How long have you been in San Francisco?

A. Since 1852.

Q. 10. How long have you known of similar devices in this country, if you have known of them at all?

A. I never paid much attention here. I remember that I saw one at the house of the consul for France, Mr. Grisar. He has one that

he brought with him that he has had thirty years or had had. He died lately, you know.

269 Q. 11. Where did he have it, here?

A. In his parlor in his house.

Q. 12. What was that?

A. It was, just as I mentioned, a sort of a castor, to Americanize the word for it. It held decanters, and, revolving, it opened and shut each one by itself. It was made of silver or plated ware; I couldn't say which; I didn't handle it closely. It was bright and apparently of silver.

Q. 13. In view of the state of the art as shown by the patent just put in evidence by the respondent, could there have been any invention in merely making a cue rack revolving after the year 1858, the date of the patent to Gleason, the cue rack performing no office except merely to revolve and carry with it the cues placed upon it?

(Objected to by complainant as incompetent and irrelevant, calling for the opinion of the witness.)

270 A. No; it could not be anything new. It has been tried by many, and there are always senseless parties who claim to have inventions who pick up old inventions of others and claim them as their own.

Q. 14. Have you ever made any revolving cue racks divided off into partitions, so that cues could be placed in them and locked in, so that the cues could not be taken out?

A. No, sir; I never made one of them. I pronounced them a failure from the first that I saw of them. I saw one in the Palace Hotel and I pronounced it a failure. In fact, the doors of those revolving cue racks were taken out and they are now without doors. They are a perfect nuisance.

Q. 15. When was it that you saw Consul Grisar have a revolving decanter-holder in San Francisco?

271 A. I first saw it in 1860 or 1861; in 1862 especially; I remember it very well. We had our parting dinner there with our family before we left for France, and we left the 26th of June, 1862. This was the 25th of June, 1862, and it was served with coffee on the table. I know that I amused myself with it.

Q. 16. Whereabouts was that?

A. On Powell street.

Q. 17. In this city?

A. Yes, sir.

Q. 18. Who besides yourself saw it at that time?

A. Oh, several; my father and mother and the guests there; we were fifteen or twenty guests.

Cross-examination of FERDINAND DE ST. GERMAIN by Mr. BOONE:

Q. 1. Have you seen the model, Exhibit B?

A. I see it now.

Q. 2. Have you made any cue racks like that one?

A. Somewhat similar to this.

Q. 3. Are the cue racks which you made exactly similar to
272 the cue rack, Exhibit B?

A. We have different patterns; we have now another one which we are making; we improve all the time.

Q. 4. Have you made cue racks exactly like Exhibit B?

A. We may. Yes, sir.

Q. 5. When?

A. Different times.

Q. 6. Within the last three years?

A. Yes, sir.

Q. 7. Do you know who made the cue rack, Exhibit B?

A. No; I could not say; they all look alike; everybody makes them; Mr. Jungblut and Mr. Liensenfeld and everybody makes them, and we have the same turner, Mr. Jungblut and myself; he makes them for both.

Q. 8. You cannot see any invention, any novelty, in the revolving cue rack over and above the inventions shown in those patents, Exhibits 1, 2, and 3, can you?

A. No; not at all. They are on the same principle; it turns on a pivot.

273 Q. 9. You see nothing patentable at all in the revolving cue rack?

A. Nothing at all.

Q. 10. Can you see any point of invention between the devices shown in the patent, Exhibit 1, and the patent, Exhibit 2?

A. No.

Q. 11. Do you see any point of invention between these two and the devices described in Exhibit 3?

A. Yes; there is.

Q. 12. What is it?

A. It is the opening and shutting of those doors.

Q. 13. That is patentable, is it?

A. Yes, sir.

Q. 14. That is the only patentable feature you see in any of those patents?

A. Certainly. The thing is as old as the world.

Q. 15. Then, according to your judgment, the Government of the United States did wrong when they issued this patent, Exhibit 1?

A. I have no judgment to pass.

Q. 16. In your judgment?

274 A. Certainly, the thing had been used before.

Q. 17. Then the Government did wrong in issuing that patent to Farrar and in issuing the patent to Hajey?

A. It didn't do wrong, but it acted without foreknowledge.

Q. 18. According to your judgment, the Government did wrong in granting those patents?

A. No; if a man is in error he does not do wrong.

Q. 19. According to your judgment, it was an error on the part of the Government of the United States to issue those patents?

A. It was an error; yes, sir.

Q. 20. What makes you say that the opening and shutting of those doors, as shown in Exhibit 3, is new and patentable?

A. It is different from this (referring to patent, Exhibit 2), and the screw locks them.

Q. 21. That is the novel feature of that patent?

A. The button and the crank. The opening and shutting
275 are old, but the devices by which it is done—the button and the crank—is new.

Q. 22. That is a very small part of the machine, is it not?

A. It is the great thing. On our cushions it is the arrangement for tightening the wire that makes the value of it. It is the most ingenious part of the whole.

Q. 23. But it is only a small part of the whole machine, the bottom and crank in the device described in patent, Exhibit 3?

A. So far as its size is concerned, yes. I consider it the most important part of the invention, this invention being directed to this closing and shutting, and this crank and button, by being pushed, close up the doors. That is, in my judgment, something new.

Q. 24. Please look at those patents, Exhibits 1, 2, and 3, and tell me whether you find in either of them any revolving device arranged to be fastened to a wall by brackets?

A. There is no such thing here.

Q. 25. Did you ever see a revolving device arranged to be
276 fastened to a wall on brackets before you saw this cue rack?

(Objected to by respondent for the reason that complainant's patent does not call for the bracket which fastens the cue rack to the wall as any part of the invention.)

A. Yes, sir.

Q. 26. What was it?

A. I saw cane racks and I saw musket racks.

Q. 27. Fastened to the wall on brackets?

A. Yes, sir.

Q. 28. Where?

A. In armories.

Q. 29. Where?

A. I wouldn't say here, but I have seen them in Europe in these Corps de Gardes.

Q. 30. Have you seen them in the United States?

A. No; I couldn't say that I have seen them, but I have heard that they have existed.

Q. 31. Have you ever seen them?

A. No; I have not. I have not visited any arsenals.

277 Q. Then the only revolving device that you have seen in the United States to be fastened up to a wall by brackets is this cue rack?

A. No; not by any means. I have seen cue racks and umbrella racks.

Q. 33. Where?

A. Here in this city.

Q. 34. Tell us the place.

A. What I could remember most would be in jewelry stores, for instance. I have seen those racks on which jewelry was revolving fastened to the walls.

Q. 35. Upon brackets like the cue rack?

A. Not elevated. But it don't matter whether it was three or six feet high; it was on brackets.

Q. 36. You say you have seen revolving umbrella stands; tell us where.

A. It seems to me that I have seen them here. One is at the store of the manufacturer of canes near the entrance of the Bush-Street Theatre.

Q. 37. When did you see it there?

A. Some two or three years ago.

278 Q. 38. Is that all you have seen?

A. Here, yes, sir; but they are in Paris very common. Every umbrella and cane store have them arranged all around the place and in the show windows.

Q. 39. Did you ever see any of them in the United States besides at this one place?

A. No; because in my travels I did not observe these things nor did I know that I would ever have anything to do with them whatever. I didn't notice them. The stores in Europe are arranged in that way. If you want a cane you can go and select a cane from a rack, turning the rack around in this same way.

Q. 40. It is a very convenient arrangement for billiard cues, is it not?

A. No; I don't think it is. But we have to make changes.

Q. 41. You don't think it is convenient?

A. Not very. I prefer a wall rack myself.

279 By Mr. WHEATON:

Q. 42. The wall rack is more convenient?

A. Yes, sir.

By Mr. BOONE:

Q. 43. Still you make them, don't you?

A. Yes, sir.

Q. 44. Why do you make them?

A. For a change, just as there is a change in fashions; we change in makes and styles.

Q. 45. Which occupies the greater space on the wall, the straight rack or the revolving rack?

A. The straight rack.

Q. 46. You can sometimes put a revolving cue rack where you have not room for a straight line?

A. Oh, there is always room for a straight rack.

Q. 47. Can't you put a revolving rack in a corner, where it will not take up much space?

A. They never put them in corners.

Q. 48. Have you never seen one in a corner?

A. Yes; the first one we made was put in a corner, but
280 they are not made now so as to be put in a corner. When the brackets are made different, on a bevel, they can be put in a corner. You can put them in a corner if they are made to be put in a corner, but, as a general thing, they are made to be put flat on the wall.

Q. 49. How many of these revolving cue racks have you made during the past three years?

A. We don't sell them; we give them with the tables.

Q. 50. How many have you given with tables within the last three years?

A. I couldn't say; it is impossible. I have no partner, and I do as I please.

Q. 51. What proportions of revolving cue racks, as compared with straight racks, have you given out with your tables?

A. About one-fifth or one-sixth; I could not say.

Q. 52. Every fifth or sixth one was a revolving cue rack?

A. Yes, sir; I always object to them, because they cost more
281 to manufacture them.

Q. 53. How is — with your customers; do they ever require them?

A. No; they do not. They leave it to us.

Q. 54. They never tell you that they want a revolving rack?

A. I couldn't say never. Occasionally they ask for one, but if we talk them out of it they will take the other one.

— 55. You talk them out of it because it is cheaper to make the straight ones?

A. Yes, sir.

Q. 56. And you do talk them out of it, do you?

A. Yes; I do all I can.

Q. 57. You say with every fifth or sixth table that you sell is sent out a revolving rack?

A. Yes; just about.

Q. 58. In the tables shown in those patents, Exhibits 1 and 2, how are the things which are to be brought to a certain position fastened in the turn-table?

A. It is a platform that revolves.

Q. 59. How is the thing held in that platform?

282 A. The things are held on it.

Q. 60. Tell us how they are held on it.

A. They are simply laid on, being a flat surface.

Q. 61. And they simply rest on that surface?

A. Yes, sir.

Q. 62. Supported on that surface entirely, so that when the table is revolved they come round?

A. Yes, sir.

Q. 63. Is the revolving part above or below in those tables described in the patents, Exhibits 1 and 2?

A. Above.

Q. 64. I mean the device which supports the thing to be brought in front of you?

A. It is on a flat surface—a platform.

Q. 65. The spindle on which that platform is supported, does it extend above or below the platform in the tables described in these patents?

A. It is below; it is not seen above the table.

Q. 66. It is only below the platform that the spindle extends?

A. Yes; it is hidden.

283 Q. 67. You speak about finding an endless screw in one of those patents. Will you please tell us what an endless screw is?

A. Certainly. It is a piece of steel or iron, with a top which is made to fit the matrix of it, inserted in a pillow or anything—whatever is used—and which can always turn one way or another; it never sticks.

Q. 68. That is what you call an endless screw, is it?

A. Yes, sir.

Q. 69. Is the screw spindle straight or curved?

A. It is spiral.

Q. 70. You mean the threads of the screw are spiral?

A. Yes, sir.

Q. 71. But how about the spindle on which the threads are cut?

A. It is straight, of course.

Q. 72. Then if you turn it in one direction all the time it would soon stop, would it not, or get out of its matrix?

A. There are some of those that never stop; that when they

284 get to a certain place at the bottom they are made so that they will turn. I have seen piano stools which, although the screw is cut in a spiral, when they come down to the end of the screw they will still turn.

Q. 73. The screw won't turn, will it?

A. I don't know whether it is the screw or what — is.

Mr. WHEATON: We rest, reserving the right to move for leave to amend the answer, to set up the use of revolving cue racks by Jacob Strahle and other parties prior to the date of complainant's patent.

It is stipulated and agreed by and between counsel that a certified copy of the patent, Complainant's Exhibit A, may be substituted in place of said patent and said patent withdrawn.

285 *Examiner's Certificate.*

I certify that previous to giving his testimony each of the witnesses named in the above record was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the cause in the caption of this record named; that by consent of counsel for the respective parties to said cause the depositions were taken down in short-hand and transcribed by S. C. Houghton, and that the reading of said depositions to the witnesses and the signing thereof by them respectively were by said counsel waived.

I further certify that I am not attorney nor of counsel for either of the parties to said cause, nor in any way interested in the event thereof.

In testimony whereof I have hereunto set my hand this 26th day of September, A. D. 1882.

JOS. F. O'BEIRNE,
Examiner, &c.

286 Endorsed: Filed Sept. 26, 1882. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

287 EXHIBIT C.

Placita.

Pleas in the circuit court of the United States in and for the northern district of Illinois, began and held at the United States court-rooms, in the city of Chicago, on the first Monday in May, A. D. 1877, before the Honorable Henry W. Blodgett, district judge, and on the 17th day of May, A. D. 1877, and of our Independence the one hundred and first year.

W. H. BRADLEY, *Cl'k.*

EMANUEL BRUNSWICK
v.
JOHN M. BRUNSWICK, MOSES BENSINGER, ANTON F. TROESCHER, and LEO SCHMIDT. } In Chancery.

Be it remembered that on the 20th day of February, A. D. 1873, said complainant, by West & Bonel, his solicitors, filed in the office of the clerk of said court his bill of complaint against said defendants; which said bill is in the following words and figures *following*, to wit:

288 United States Circuit Court, Northern District of Illinois.
In Equity.

To the honorable the judges of the circuit court of the United States in and for the northern district of Illinois, in chancery sitting:

Emanuel Brunswick, of Chicago, Illinois, and a citizen of said State, brings this his bill of complaint against John M. Brunswick and Anton F. Troescher, of Cincinnati, Ohio, and citizens of said State of Ohio, and Moses Bensinger and Leon Schmidt, of Chicago, Illinois, and citizens of said State of Illinois.

And thereupon your orator complains and says that before the seventh day of January, eighteen hundred and sixty-eight, he was the true, original, and first inventor of a certain new and useful billiard-cue rack not known and used by others before his said invention thereof, and which had not at the time of his application for a patent therefor been in public use or on sale with his consent or allowance for a period of more than two years, as your orator verily believes.

289 And your orator further shows unto your honors that he, so being the inventor of said improvement and being a citizen of the United States aforesaid, made application to the proper Department of the Government of the United States for letters patent therefor, in accordance with the then existing laws of Congress, and, he having duly complied in all respects with the conditions and requisitions of said laws, such proceedings were had that on the seventh day of January, eighteen hundred and sixty-eight, letters patent of the United States for the said improvement and invention, under the seal of the Patent Office of the United States, signed by the acting Secretary of the Interior and countersigned by the Commissioner of Patents and bearing date the day and year last aforesaid, were issued in due form of law and delivered to your orator, whereby was granted and secured to him and his heirs, executors, administrators, or assigns, for the term of seventeen years from the day of the date thereof, the full and exclusive right of making, using, and vending to others to be used the said improvement and invention, a description whereof is given in the words of the said inventor in a schedule in writing, accompanied
290 by drawings and references thereto, duly annexed to said letters patent when the same were issued and made a part thereof, as by the said original letters patent or a duly authenticated copy thereof, in court to be produced, will fully appear; a copy of which, without the drawings, is hereto annexed, forming part of this bill and marked Exhibit "A."

And your orator further shows unto your honors that the said improvement and invention patented as aforesaid has hitherto been in the exclusive possession of your orator or his assignees or licensees, and has hitherto been and still is of great value and profit to your orator; that he has introduced the same into public use extensively and that the same is valuable to the public, and but for the infringement hereinafter complained of your orator would now be in the undisturbed possession and enjoyment of the exclusive privileges secured by said letters patent.

Yet the said defendants, as your orator is informed and believes, well knowing the premises, but contriving to injure your orator, and without his consent or allowance and without right and in violation of your orator- said rights, have, within said State of
291 Illinois and within said northern district of Illinois and during the term of said letters patent, made, used, and vended and are still making, using, and vending to others to be used large numbers of billiard-cue racks, but how many your orator cannot state, but prays that the defendants may discover and set forth the number containing substantially the improvement and invention or a material and substantial part thereof set forth and patented in and by said letters patent, and thereby the said defendants have infringed and still do infringe and your orator fears that in future they will infringe upon the exclusive rights and privileges secured to your orator as aforesaid.

And your orator says that he has sustained damages by reason of said infringement.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein prayed, and may, but not on oath, answer on oath being hereby expressly waived, and, according to the best of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make
292 to all and singular the premises, and that they may be decreed to account for and pay over to your orator all gains and profits realized by them from the unlawful making, using, or vending the improvement vested in your orator as aforesaid and the damages which your orator has sustained thereby, and that the defendant may be perpetually restrained, by an injunction to be issued out of this honorable court, from making, using, or vending any billiard-cue rack containing the improvement and invention secured as aforesaid to your orator, or any material part thereof, and that your orator may have such other or further relief as equity may require—

May it please your honors to grant unto your orator not only a writ of injunction, conformable to the prayer of this bill, but also a writ of subpœna, directed to the defendants, John M. Brunswick, Moses Bensinger, Anton F. Troescher, and Leon Schmidt, and commanding them, at a certain time and under a certain penalty, to appear before your honors in this court, then and there to answer unto this bill of complaint and to abide by and perform such decree as the court may make in the premises; and your orator will ever pray, &c.

E. BRUNSWICK.

WEST & BOND,
Solicitors and of Counsel for Complainant.

293 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Emanuel Brunswick, the complainant in the foregoing bill named, being duly sworn, says that he has heard read the foregoing bill and knows the contents thereof, and that the statements therein contained, so far as they are within his own knowledge, are true, and so far as they are derived from the information of others he believes them to be true.

And he further says that he verily believes himself to be the original, true, and first inventor of the new and useful billiard-cue rack which is described in the letters patent granted to your orator, Emanuel Brunswick, mentioned in the foregoing bill.

And deponent further says that he verily believes that he, the complainant, is the owner of said letters patent as set forth in said bill.

E. BRUNSWICK.

Subscribed and sworn to before me this ninth day of January, A. D. 1873.

O. W. BOND,
Notary Public in and for the City of Chicago, County of Cook, State of Illinois.

294 EXHIBIT "A."

EMANUEL BRUNSWICK, of Chicago, Illinois.

Letters Patent No. 72969, dated January 7th, 1868.

Billiard-Cue Rack.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, E. Brunswick, of the city of Chicago, in the county of Cook, State of Illinois, have invented need [new] and useful improvements in billiard-cue racks, and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawing, making part of this specification, in which—

Drawing No. 1 represents the plain revolving cue rack, and Drawing No. 2 represents the lock-up rack for private use.

The nature of my invention consists in making the billiard-cue rack so arranged that it may revolve and be detached from the wall.

To enable others skilled in the art to make and use my in-
295 vention, I will proceed to describe its construction and operation.

Two circular plates "A" and B (drawing No. 1) are firmly secured to a vertical shaft, "C." The lower plate "A" is provided with a rim, *a*, at its outer edge to prevent the butt end of the cue from slipping off the plate, and the upper plate "B" is provided with several openings through which the points of the cues are passed. Each plate is provided with a metallic rim, D, which enters a metallic socket, "E," inlaid in the stationary brackets F F, and revolve in it. The brackets are secured to a wall, a pillar, or any other object, and support the rack.

I make private cue racks (drawing No. 2) in which the lower plate "A" forms a bottom to a round box, "B," open on top and divided into compartments C C by partitions *p p*, each compartment having a door, "D," hung on hinges and provided with a lock and key. The upper plate E forms a bottom to the box B, and is provided with several holes. The rack, being revolving, is very convenient for handling the cues.

What I claim as my invention and desire to secure by letters patent is the revolving billiard-cue rack constructed
296 and operating substantially as and in the manner herein described and specified.

EMANUEL BRUNSWICK.

Witnesses:
J. B. TURCHIN.
JAS. R. HAYDEN.

(Endorsed:) Filed February 20th, 1873. W. H. Bradley, clerk.

And afterwards, to wit, on the 25th day of April, A. D. 1873, the said defendants, Moses Bensinger, Anton F. Troeschier, and Leo Schmidt, by Barber and Lackner, their solicitors, filed their answer to said bill of complaint; which said answer is in the following words and figures, to wit:

$4.00.

United States Circuit Court, Northern District of Illinois.

The joint and several answers of Moses Bensinger, Anton F. Troeschier, & Leo Schmidt, defendants, to the bill of complaint of Emanuel Brunswick, complainant.

These defendants, now and all times saving and reserving unto themselves all manner of benefit & advantage to be had by
297 way of exceptions to the manifold errors and insufficiencies in the said complainant's bill of complaint, for answer thereto or unto such parts thereof as they are advised it is material for them to make answer unto, answering, say—

That they deny that said complainant is or was the true, original, & first inventor of the said billiard-cue rack mentioned in his said bill of complaint; and these defendants aver that said revolving cue rack mentioned and described in said complainant's bill of complaint and letters patent was invented by one Frederick E. Held in the month of October, 1865, at the city of Chicago, Cook county, Illinois; that said complainant had nothing to do with said invention; that said Held at the time of the invention of said cue rack was an operative in the billiard-table manufactory of J. M. Brunswick & Bros., in the city of Chicago aforesaid, of which firm said complainant was a member; that said firm of J. M. Brunswick & Bros., in the month of October, A. D. 1865, were about to open a new billiard hall in the city of Chicago, & said J. M. Brunswick desired a novelty in the way of a cue rack with which to furnish said hall; that said Held thereupon, at the suggestion of said J.
298 M. Brunswick, proposed the said revolving cue rack, &, the same meeting with the approbation of said J. M. Brunswick, the said firm caused to be manufactured fourteen of said revolving cue racks, & the same were put into said billiard hall for use as early as the 5th day of December, A. D. 1865; and these defendants further aver that said complainant has wrongfully and piratically appropriated said invention to his own use, and that all his representations, both in his said bill of complaint & in his said application for letters patent that the complainant is the true and original & first inventor of said revolving cue rack, as [are] false & fraudulent.

And these defendants, further answering, show unto your honor & allege the fact to be that said revolving cue rack has been in public use since the early part of December, A. D. 1865, & more than two years prior to said complainant's application for his said letters patent; that large numbers thereof were manufactured and

sold by said firm of J. M. Brunswick & Bro. in the city of Chicago, Cook county, Illinois, in the month of December, A. D. 1865, & more than two years prior to said complainant's application for letters patent; also that large numbers of said cue racks were manu-
299 factured and sold in Cincinnati, Ohio, in the month of December, A. D. 1865, with the knowledge and consent of said complainant & more than two years prior to said complainant's application for his said letters patent; and these defendants deny that said invention has ever been in the exclusive possession of said complainant or that he has introduced the same to public use.

And these defendants, further answering, show unto your honor & allege the fact to be that said firm of J. M. Brunswick & Bro. continued the active manufacture & sale of said revolving cue racks from the early part of the month of December, A. D. 1865, down to the —, A. D. —.

That in the year A. D. 1868 the said complainant conceived the idea that it would be advantageous to the said firm of J. M. Brunswick & Bros. to procure letters patent for said cue rack, and that said letters patent *that said letters patent* were thereupon procured by him, but the whole expense therefor as [was] paid & borne by the said firm of J. M. Brunswick & Bros., & the same were procured by him for the mutual benefit of each and all of the members of said firm and with the understanding that any advantage to be
300 derived therefrom was the property of the firm of J. M. Brunswick & Bros.; that each member of said firm, or his grantee or licensee, should have the right to any and all benefits which might be derived as result from said letters patent, & in fact the said Emanuel Brunswick has always held said letters patent in trust for the mutual benefit & advantage of himself & his said copartner, and has never held or been entitled to hold them for his sole, separate, or exclusive use or benefit, and these defendants aver they are now doing business in the city of Chicago under the style and firm name of *the* J. M. Brunswick & Co., and have been since the first of December, A. D. 1872.

That said business is the manufacture & sale of billiard tables, cue racks, &c.; that during that time they have, with the express consent of said J. M. Brunswick, manufactured about five hundred of said revolving billiard-cue racks & no more; that they alleged & show unto your honor that if said letters patent have any validity whatever (which these defendants deny), then said J. M. Brunswick is entitled to the benefit derived therefrom equally with the
301 said complainant, & that the consent of said J. M. Brunswick is a sufficient & ample authority to these defendants to manufacture & sell said billiard-cue racks, without this, that any other matter or thing in the said complainant's bill of complaint contained & not herein specifically admitted or denied is true; all which the defendants are ready to aver, maintain, and prove as this honorable court shall direct, & pray to be hence dismissed with their reason-

able costs & expenses in that behalf most wrongfully sustained; and these defendants will ever pray, &c.

LEO SCHMIDT.
M. BENSINGER.
A. F. TROESCHIER.

BARBER & LACKNER,
Solicitors for D'f'ts.

STATE OF ILLINOIS, } ss:
Cook County, }

Leo Schmidt, being duly sworn, deposes and says that he is one of the defendants to the bill of complaint within mentioned; that the foregoing answer by him subscribed is true in substance & in fact, as he verily believes.

LEO SCHMIDT.

302 Subscribed and sworn to before me this 17th day of April, 1873.

[SEAL.] HOLDRIDGE O. COLLINS,
Notary Public.

(Endorsed:) Filed April 25, 1873. Wm. H. Bradley, cl'k.

And afterwards, to wit, on the twentieth day of February, A. D. 1875, the said defendant, John M. Brunswick, filed his answer to said bill of complaint; which said answer is in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois.

The separate answer of John M. Brunswick, one of the defendants, to the bill of complaint of Emanuel Brunswick, complainant.

The said defendant, for answer to the said complainant's bill of complaint or to such part thereof as he is advised it is ma-
303 terial for him to make answer unto, answering, says that he denies that said complainant was ever the true, original, or first inventor of the said billiard-cue rack mentioned in his bill of complaint; and defendant avers that said billiard-cue rack was originally gotten up by one Frederick E. Held, upon the suggestion of this defendant, in the fall of the year A. D. 1865, and the said complainant had nothing to do with the invention thereof, and all of his claims to that effect are false and fraudulent; and this defendant, further answering, shows unto your honors and alleges the fact to be that said revolving cue rack was first manufactured in this country at the factory of J. M. Brunswick & Brothers, in the city of Chicago, Illinois, in the fall of the year A. D. 1865.

That said firm of J. M. Brunswick & Brothers was composed of this defendant, his brother, Joseph Brunswick, & the said complainant, Emanuel Brunswick.

That from the month of October, in said year, up to the 6th day of August, A. D. 1866, the said revolving cue rack was contin-

uously manufactured & sold by said firm at said city of
304 Chicago, and the same was, in fact, during that period largely introduced and brought into public use by said firm throughout the United States.

That said cue racks, so manufactured and sold during that period and introduced into public use, were sold with the full knowledge of said complainant without any reserve or qualification whatever on his part and without any notice, claim, or pretence of any exclusive right therein, or of any intention to secure a patent thereon on the part of said complainant as [or] by the said firm or any or either member thereof.

And this defendant further shows unto your honors and alleges the fact to be that between the 1st day of October, A. D. 1865, and the 6th day of August, A. D. 1866, large numbers of said revolving cue racks were manufactured and sold and introduced into public use at the city of Cincinnati, Ohio, by this defendant and the said Joseph Brunswick, who were then doing business as copartners.

That the same were sold without any reserve or qualifica-
305 tion and without any notice, claim, or pretence of any exclusive interest or right therein on the part of any person.

And this defendant avers and shows unto your honors that the manufacture and sale of said cue racks at said city of Cincinnati as aforesaid was with the full knowledge of said complainant, and that he acquiesced therein without asserting or in any manner making or giving notice of any exclusive or proprietory interest of any kind whatever on his part either to this defendant or the public.

And this defendant avers that said billiard-cue rack had been introduced into general use throughout the United States with the full knowledge and acquiescence of said complainant prior to the first day of August, A. D. 1866, without any reserve or notice of any claim to an exclusive right therein on the part of said complainant.

And this defendant, further answering, shows unto your honor & alleges the fact to be, upon information and belief, that the application for said letters patent was not made by said complainant until on or about the 6th day of August, A. D. 1866.

306 And this defendant therefore insists that, conceding the said complainant to be the inventor of said revolving cue rack, nevertheless the said letters patent are null and void by reason of the abandonment of said invention to the public use by said complainant prior to the application by him for the grant of the same.

And this defendant further avers and shows unto your honor and alleges the fact to be that from the month of October, A. D. 1865, down to the spring of the year A. D. 1871 this defendant, as a member of said firm of J. M. Brunswick & Brothers, at said city of Chicago, was continuously engaged in the manufacture and sale of said revolving cue rack, and also in connection with said Joseph Brunswick, at said city of Cincinnati, with the full knowledge and acquiescence of said complainant.

That during all that period said complainant never made any

claim of an exclusive right to manufacture and sell said billiard-cue racks or to the use thereof as against this defendant or the
307 said Joseph Brunswick, nor has this defendant ever at any time in any manner recognized such claim or right on the part of said complainant, and this defendant therefore insists that, admitting said complainant to be the real inventor of said cue rack he must, nevertheless, be deemed to have granted to this defendant a perpetual license to manufacture and sell the same.

And this defendant further shows unto your honors and alleges the fact to be that the whole expense of procuring said letters patent were, in fact, borne and paid by said firm of J. M. Brunswick & Bros.; that said expenses were charged to said firm by the express direction of said complainant; that it was always understood between the members of said firm that said patent was procured for and on account of said firm.

That in case said letters patent are to be held valid, the said complainant should be deemed to hold them in trust for the mutual benefit of this defendant, said Joseph Brunswick, and said complainant.

308 And this defendant, further answering, shows unto your honors and alleges the fact to be that the manufacture and sale of said cue racks by this defendant and his codefendants Bensinger, Troeschier, and Schmidt, complained of in said complainant's bill of complaint, is but a continuation of the old business of the firm of J. M. Brunswick & Brothers, in which this defendant has been interested in various forms since the year A. D. 1864, and that should the said letters patent be deemed valid and upheld as against the general public, yet by reason of the premises the said complainant ought to be estopped from asserting any exclusive right therein as against this defendant and his said codefendants in business, and without this, that any other matter or thing in said complainant's bill of complaint contained and not herein specifically answered, admitted, or denied is true; all which this defendant is ready to aver, maintain, and prove as this honorable court shall direct.

Wherefore this defendant prays that he may be hence dismissed with his reasonable costs in that behalf expended.
309

JOHN M. BRUNSWICK.

BARBER & LACKNER,
Solicitors for Def't.

(Endorsed:) Filed Feb. 20, 1875. Wm. H. Bradley, clerk.

And afterwards, to wit, on the fifth day of April, A. D. 1875, in the record of the proceedings in said court in said entitled cause appears the following entry, to wit:

APRIL 5TH, 1875.

Hon. H. W. Blodgett, judge U. S. c't court, N. dist. Ills.

EMANUEL BRUNSWICK
vs.
JOHN M. BRUNSWICK *et al.* } In Chancery.

This cause having been brought to a hearing upon the pleadings

and proofs, and counsel for both complainant and defendants
310 having been heard, and the court being fully advised, it is ordered, adjudged, and decreed as follows:

First. That the letters patent granted to said Emanuel Brunswick, dated January seventh, A. D. 1868, are good and valid, are still in force, and are owned by the complainant.

Second. That the defendants, John M. Brunswick, Moses Bensinger, Anton F. Troeschier, Leon Schmidt, have infringed upon and violated the rights of the complainant under said patent, as in said bill set forth.

Third. That the complainant is entitled to a discovery and account from the said defendants of all gains and profits realized by them in consequence of their said violation and infringement of said letters patent and the rights of the complainant thereunder since the dissolution of the firm of J. M. Brunswick and Brothers, of Chicago, and is entitled to recover from said defendants such gains and profits, and in addition thereto the damages the complainant has sustained by such infringement of his said rights.

And it is further ordered that this cause be referred to Henry W. Bishop, the master in chancery of this court, to ascertain and
311 compute and to take and state an account of all such gains and profits accruing to and realized by the said defendants by reason of their infringement of said letters patent and the complainant's rights thereunder since the dissolution of said firm, as before mentioned, and in addition thereto assess the damages sustained by the complainant by reason of such infringement to the date of his report.

And the master is directed to take proofs upon the above-mentioned matters and to report the same, together with said account and assessment of damages, with all convenient speed.

And he is authorized to require the production of the books of account of said defendants and to examine the defendants and others on and touching the matters hereby referred to him.

And further directions are reserved until the coming in of said report.

And afterwards, to wit, on the 17th day of May, A. D. 1877, the master in chancery filed his report in said entitled cause; which said report is in the words and figures following, to wit:

312 *Master's Report.*

UNITED STATES OF AMERICA,
Northern District of Illinois:

In the Circuit Court of the United States.

EMANUEL BRUNSWICK
v.
JOHN M. BRUNSWICK, MOSES BENSINGER, and ANTON F. TROESCHER, LEO SCHMIDT.

To the hon. the judges of said court:

I, Henry W. Bishop, master in chancery, to whom, by a decree

entered in said cause on the fifth day of April, A. D. 1875, it was referred to me to take testimony in said cause, ascertain and report to the court the damages sustained by the said complainant by reason of the infringemnt by the defendants of the letters patent in said bill described, hereby report that I have been attended by all of the parties to this proceeding, either in person or by their respective solic-
313 itors, or both, who having submitted to me the testimony taken in this cause and a certain stipulation signed by each of them, which is hereto attached and made a part hereof, and having examined said testimony and stipulation, I find and report that the complainant is entitled, by reason of the gains and profits realized by said defendants in the infringement by them of said letters patent, to the sum of $250.00, and for damages sustained by complainant by reason of said infringement the sum of $300.00. I therefore recommend that a decree be entered in favor of said complainant for the payment by the defendants of the sum of $550.00, being the aggregate of the two sums herein specified.

All of which is respectfully submitted.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

314 *Stipulation.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court of the United States for the Northern District of Illinois. In Equity.

EMANUEL BRUNSWICK
v.
JOHN BRUNSWICK, MOSES BENSINGER, ANTON F. TROESCHER, and LEO SCHMIDT. } Bill on Infringement of Patent.

It is hereby stipulated and agreed by and between the parties to said cause that the said defendants have realized gains and profits from the infringement by them of the letters patent issued to said complainant and mentioned in the decree entered in said cause April 5th, 1875, to the amount of two hundred and fifty dollars and no more, and that the damages sustained by the said complainant by reason of the infringement by the defendants of said letters patent amount to the sum of three hundred dollars and no more.
315 It is further stipulated and agreed that said damages shall be, and they are, assessed at said last-named sums, and that this stipulation shall be taken and considered as a full accounting

by the said defendants of and concerning the profits realized by them from said infringement as required by said decree.

Dated Chicago, May 9th, A. D. 1877.

EMANUEL BRUNSWICK,
Complainant.
J. M. BRUNSWICK,
M. BENSINGER,
A. F. TROESCHER,
LEO. SCHMIDT,
Defendants.

WEST & BOND,
Sol'rs for Compl't.
BARBER & LACKNER,
Def'ts' Sol'rs.

(Endorsed:) Filed May 17, 1877. Wm. H. Bradley, cl'k.

And afterwards, to wit, on the seventeenth day of May, A. D. 1877, in the record of the proceedings in said court in said entitled cause appears the following entry, to wit:

316 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States for the Northern District of Illinois. May Term, A. D. 1877.

MAY 17, 1877.

Hon. H. W. Blodgett, judge.

EMANUEL BRUNSWICK
vs.
JOHN M. BRUNSWICK, MOSES BENSINGER, ANTON F. TROESCHER, and LEO SCHMIDT. } In Chancery.

This cause having this day come on to be heard upon the report of Henry W. Bishop, master in chancery of this court, to whom, by a decree entered in said cause on the fifth day of April, A. D. 1875, it was referred to ascertain and report to this court the gains and profits accruing to and realized by the said defendants to the date of said report by reason of the violation by said defendants of the rights given to said complainant in and by the letters patent dated January seventh, A. D. 1868, and mentioned in complainant's bill of complaint herein, and to assess and report to this court the damages sustained by said complainant by
317 reason of such said violation of complainant's said rights by said defendants; which report bears date May seventeenth, A. D. 1877, and was filed in this court May seventeenth, A. D. 1877, and which said report is hereby ratified and confirmed, and the said report and the equities reserved in and by the interlocutory decree entered herein April fifth, A. D. 1875; which said interlocutory decree is hereby made a part hereof, having been by the court fully considered: It is by the court, in pursuance and by virtue of its

powers and authority given to it, ordered, adjudged, and decreed that the defendants do pay to said complainants the sum of two hundred and fifty (250) dollars, being the amount of the gains and profits accruing to and realized by said defendants by reason of their violation aforesaid of said rights conferred upon complainant in and by said letters patent dated January seventh, A. D. 1868.

And that said defendants do pay to said complainant the further sum of three hundred (300) dollars, being the amount of the damages sustained by complainant by reason of said violation by
318 defendants of complainant's said rights under said letters patent.

And it is further ordered, adjudged, and decreed that said defendants do pay all the costs taxed and to be taxed of said cause, and that said complainant have execution for said gains and profits and for said damages, amounting in the aggregate to the sum of five hundred and fifty (550) dollars, and also for the costs aforesaid.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said district, do hereby certify the foregoing to be full, true, and complete copies of the bill of complaint of Emanuel Brunswick, complainant, against John M. Brunswick and others, defendants, filed in said court on the twentieth day of February, A. D. 1873; the answers of Moses Bensinger, Anton F. Troescher, and Leo Schmidt, filed in said cause on the 25th day of April, A. D. 1873, and the separate answer of John M. Brunswick, filed in said cause on the twentieth day of February,
319 A. D. 1875; the order of said court entered of record therein on the fi-th day of April, A. D. 1875; the master's report filed in said cause on the 17th day of May, A. D. 1877, together with the final decree entered on said last-mentioned date, as the same appears from the files and records of said court in said above-entitled cause, now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, on this tenth day of March, A. D. 1882, and of our Independence the one hundred and sixth year.

[SEAL.] WM. H. BRADLEY, *Cl'k.*

Endorsed: U. S. circuit c't, dist. of Cal. Brunswick *v.* St. Germain. 2486. Complainant's Exhibit C. Filed Sept'r 26, 1882. L. S. B. Sawyer, clerk.

320 COMPLAINANT'S EXHIBIT D.

BRUNSWICK
vs.
ST. GERMAIN. } 2468.

(Letter and envelope.)

Office Clerk Circuit and District Courts United States, Northern District of Illinois.

CHICAGO, *M'ch* 11, 1882.

Boone & Miller, att'ys, &c.

GENTLEMEN: It appears from your letter to the J. M. Brunswick & Balke Co., of the 27th ult., that you suppose the orders of court should be signed by the judge. This is not the practice in this circuit. The original drafts of orders are presented to the judge, who usually indicates its correctness by simply his initials as follows: "Correct, T. D.," Thomas Drummond, or "Enter, H. W. B." by Judge Blodgett, and this is often omitted to be done when the order is presented by the clerk who receives a verbal order to enter.
321 These memoranda are considered no part of the record, but the order as engrossed on the journal. Hoping this record may be satisfactory,

I am yours, &c., W. H. BRADLEY, *Cl'k*,
STODDARD.

(Endorsed:) Filed Sept'r 26, 1882. L. S. B. Sawyer, clerk.

(Here follows bill-head marked p. 322.)

323 RESPONDENT'S EXHIBIT 1.

U. S. Circuit Court, Dist. of Cal.

BRUNSWICK
v.
ST. GERMAIN. } 2468.

Dewey & Co., U. S. and foreign patent solicitors, office of the Mining and Scientific Press & the Pacific Rural Press, San Francisco.

DEPARTMENT OF THE INTERIOR,

(Vignette.)

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted William B. Farrar & Jonathan H. Farrar August 25, 1857, No. 18042, for improvement in self-waiting tables.

In testimony whereof I, V. D. Stockbridge, acting Commissioner of Patents, have caused the seal of the Patent Office to be
324 affixed this thirteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

[SEAL.] V. D. STOCKBRIDGE,
Acting Commissioner.

No. 18042.

UNITED STATES OF AMERICA:

(Vignette.)

To all to whom these letters patent shall come:

Whereas William B. Farrar & Jonathan H. Farrar, of Evans Mills, N. C., have alleged that they have invented a new and useful improvement in self-waiting tables, which they state has not been known or used before their application; have made oath that they are citizens of the United States; that they do verily believe that they are the original and first inventors or discoverers of the said improvement, and that the same hath not, to the best of their knowledge and belief, been previously known or used; have paid into the Treasury of the United States the sum of thirty dol-
325 lars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said William B. Farrar & Jonathan H. Farrar, their heirs, administrators, or assigns, for the term of fourteen years from the twenty-fifth day of August, one thousand eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improvement, a description whereof is given in the words of the said Farrars in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this
[SEAL.] twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Inde-
326 pendence of the United States of America the eighty-second.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

S. T. SHUGERT,
Act'g Commissioner of Patents.

The Schedule Referred to in These Letters Patent and Making Part of the Same.

To all whom it may concern :

Be it know- that we, William B. Farrar and Jonathan H. Farrar, of Evans Mills, in the county of Chatham and State of North Carolina, have invented a new and useful improvement in self-waiting dining tables, and we do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the annexed drawings, forming part of this specification, in which—

Fig. 1 is a top view ;

Fig 2, an inverted plan; and

327 Fig. 3, a vertical central section of a table constructed with my improvement.

Fig. 4 is a detached view of the central revolving portion of the same.

Fig. 5 is also a detached view of the central revolving portion, it being inverted and shown in perspective.

Before stating the nature of my invention I deem it prudent to state that I am aware that it is not new to have a circular hole formed in a table and a circular disc without an overlapping lip fitted so as to revolve within the same. I am also aware that a circular disc has been arranged slightly above the solid top of a table with a view of revolving and overlapping the outer cloth.

Therefore the nature of my invention does not consist in either of the above devices, but it consists in constructing the central disc, when fitted down into the circular hole, with a thin lip projecting horizontally from the upper portion of its circumference and with a circular rib projecting vertically from its under side all round and near its circumference, whereby the top can be fitted into

328 a circular hole cut in the top of the table and still overlap the outer portion of table cloth. and when thus fitted in the hole can be conveniently turned from the under side by any person round the table.

To enable others skilled in the art to make and use our invention we will proceed to describe it minutely.

A in the accompanying drawings represents the frame of the table; B C, the top of the same. The part B is fastened permanently to the frame A and has a circular hole, *a*, formed in its centre, as shown in Figs. 2 & 3. The part C is of circular form and is fitted loosely in the hole *a* of the part B, as shown in Fig. 3. It is supported by a vertical shaft, D, which has its bearing in a stirrup, E, set in the cross-pieces *b b* of the frame. The shaft D is capable of revolving in order that the central part C of the top may be turned within the outer part B.

F is a lip formed round the entire circumference of the

329 part C of the table top. It extends some distance on to the part B of the table's top, but is kept slightly above it by the shaft D. Under this lip the inner edge of the cloth *d*, which is spread on the part B, is inserted loosely, as shown in red, and thus a lia-

bility of this part of the top of the table being exposed, when the cloth *d* is but slightly shifted, is avoided. The lip F also serves to prevent the plates, which rest on the part B, from bearing on the part C, and thus interfering with its turning. G is a rib of ring form secured fast on the under side and near the circumference of the part C. This rib serves a very useful office beside that of bracing the part C, it providing a hole all round the table, whereby any person can turn and control the extent of the movement of the central part C from the under side of the table, and thus bring opposite to himself any dish desired with the greatest ease, convenience, and regularity.

Self-waiting tables without this rib are usually operated by friction of the hand being brought in contact with friction of the
330 under side of the part C, and owing to thus operating much inconvenience is experienced, and often jarring occurs, owing to the part C at first sticking and resisting the force of the hand, and then suddenly giving way. The operator cannot control the movement, as he has nothing whereby to hold, and the desired dish often goes far beyond the desired distance, and the part C has consequently to be moved back again, when which is done it is just as likely to go too far back, and thus much annoyance to others round the table is caused. The practice of moving the part C from the upper side is also prevented, and thus the cloth is saved from being soiled thereby.

In using this table two cloths, *d* and *e*, shown in red, are used. The inner edge of the cloth *d*, as shown in the drawing, fits loosely under the lip F of the part C. The edge of the cloth *e* hangs down over the edge of the lip F just even with the surface of B, as shown.

The part C moves free of the part B even when covered, it
331 being caused to do so by the shaft D, which, as before stated, elevates it slightly above the same.

Having thus fully described our invention, we wish it distinctly understood that we make no claim to a table made with a central revolving part C, as this is common, but what I claim as my invention and desire to secure by letters patent is the central revolving disc C (when fitted down into the circular hole *a*), constructed with a thin lip, F, projecting horizontally from the upper portion of its circumference, and with a rib of ring form projecting from its under side and near its circumference, substantially as and for the purposes set forth.

WM. B. FARRAR.
J. H. FARRAR.

Witnesses:
JOHN S. HOLLINGSHEAD.
CHARLES KEMBEL.

Ex'd: E. A. M.. H. M. H.

(Here follows diagram marked page 332.)

333 RESPONDENT'S EXHIBIT 2.

BRUNSWICK
vs.
ST. GERMAIN. } 2468.

Dewey & Co., U. S. and foreign patent solicitors, office of the Mining and Scientific Press & the Pacific Rural Press, San Francisco.

DEPARTMENT OF THE INTERIOR,

(Vignette.)

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted George W. Hagey March 30, 1858, No. 19773, for improved self-waiting table.

In testimony whereof I, V. D. Stockbridge, acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed this thirteenth day of December, in the year of our
334 Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

[SEAL.]

V. D. STOCKBRIDGE,
Acting Commissioner.

No. 19773.

UNITED STATES OF AMERICA:

(Vignette.)

To all to whom these letters patent shall come:

Whereas George W. Hagey, of Smithland, Ky., has alleged he has invented a new and useful improved self-waiting table, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said table, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars and presented a petition to the Commissioner of Patents signifying a desire
335 of obtaining an exclusive property in the said table and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said George W. Hagey, his heirs, administrators, or assigns, for the term of fourteen years from the thirtieth day of March, one thousand eight hundred and fifty-eight, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said table, a description whereof is given in the words of the said George W. Hagey in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this thirtieth day of March, in the year of our Lord one thousand eight
[SEAL.] hundred and fifty-eight, and of the Independence of the United States of America the eighty-second.

JACOB THOMPSON,
Secretary of the Interior.

336 Countersigned and sealed with the seal of the Patent Office.

J. HOLT,
Commissioner of Patents.

The Schedule Referred to in These Letters Patent and Making Part of the Same.

To all whom it may concern:

Be it known that I, George W. Hagey, of Smithland, Livingston county, Kentucky, have invented a new improvement in self-waiting tables, and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings and to the letters of reference marked thereon:

The nature of my invention consists in providing a table of any convenient form or size having a central revolving part, B, the part B being supported by a shaft, C, revolving in the central pillar D, resting on the socket E, with handles F placed at convenient distances around its circumference.

337 To enable others skilled in the art to make and use my invention I will proceed to describe its construction and operation.

I construct the table A of any of the usual materials and of any shape or size required. The central revolving part B is made circular in form and as much smaller than the table A as will permit the placing of plates, cups, &c., of usual dimensions on table A outside of part B. The shaft C is fastened to part B by any of the known methods. The central pillar D is made hollow and provided with a socket, E, to support shaft C and a collar, G, to steady shaft C while revolving. In using my invention the dishes, &c., belonging to those sitting at the table will be placed on part A, while the dishes containing the food will be placed on central part B. The handles F will enable persons to revolve the central part B until any article desired is within their reach.

What I claim as my invention and desire to secure by
338 letters patent is in the handles F, for the purpose of turning the table & to which a table cloth may be buttoned, substantially as described.

GEO. W. HAGEY.

Witnesses:
THO. L. LEE.
JOHN DUNN, *D. S. L. C.*
Ex'd: J. A. W. M. M. K.

(Here follows diagram marked p. 339.)

340 RESPONDENT'S EXHIBIT 3.

BRUNSWICK
v.
ST. GERMAIN. } 2468.

Dewey & Co., U. S. and foreign patent solicitors, office of the Mining and Scientific Press & the Pacific Rural Press, San Francisco.

DEPARTMENT OF THE INTERIOR,

(Vignette.)

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Edward Gleason December 1st, 1857, No. 18740, for improvement in revolving bottle casters.

In testimony whereof I, V. D. Stockbridge, acting Commissioner of Patents, have caused the seal of the Patent Office to be
341 affixed this thirteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of
[SEAL.] the Independence of the United States the one hundred and sixth.

V. D. STOCKBRIDGE,
Acting Commissioner.

No. 18740.

UNITED STATES OF AMERICA:

(Vignette.)

To all to whom these letters patent shall come:

Whereas Edward Gleason, of Dorchester, Mass., has alleged that he has invented a new and useful improvement in revolving bottle casters, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the
342 sum of thirty dollars and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said Edward Gleason, his heirs, administrators, or assigns, for the term of fourteen years from the first day of December, one thousand eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said im-

provement, a description whereof is given in the words of the said Edward Gleason in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this first
[SEAL.] day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of
343 the United States of America the eighty-second.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
J. HOLT,
Commissioner of Patents.

The Schedule Referred to in These Letters Patent and Making Part of the Same.

To all whom it may concern:

Be it known that I, Edward Gleason, of Dorchester, in the county of Norfolk and State of Massachusetts, have invented a new and useful improvement in revolving bottle casters, and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, making a part of this specification, in which—

Fig. 1 is a vertical central section of my improvement.
344 Fig. 2 is an inverted plan of the same, the base of the implement being removed.

Similar letters of reference indicate like parts in the two figures.

This invention relates to an improvement on a revolving bottle caster formerly patented by me, the letters patent bearing date Oct. 21st, 1856. The invention consists in having the device by which the doors of the caster are turned arranged separately, so as to have no connection whatever with the body of the caster, so far as the rotation of said body is concerned.

The object of the invention is to render the movement of the caster and doors independent of each other, so that either may be directly moved or turned, as desired, without at all depending upon the movement of the other.

To enable those skilled in the art to fully understand and construct my invention, I will proceed to describe it.

A, Fig. 1, represents the base of the caster, which may be
345 of any proper form, and B represents the body of the caster, the bottom of which has rollers *a* attached to it, which rollers fit and work in an annular gro-ve, *b*, in the base. C is a rod which is placed centrally within the body B, the upper end of said rod having a handle or knob, D, attached and the lower end having a rod, C, attached, which rod passes through the centre of the base A and has a nut, *d*, upon its lower end, said nut securing the body and base together. The body B is allowed to rotate freely on the base A.

E represent- doors, which are of niche form, each being pivoted centrally to the body B and forming its sides, any proper number of doors being used.

Each door has a socket, *e*, at its lower end to receive the bottles and retain them within the niches.

The lower pivots, *g*, of the doors E pass through the bottom A′ of the body of the caster, and have each a pinion, *h*, placed on them.

346 These pinions gear into a wheel, F, which is placed loosely on the rod C, and said wheel F has a segment-rack, *d′*, formed on it near its center, into which rack a pinion, *e′*, gears, said pinion being on the inner end of a rod or arbor, *f*, which passes through the side of the bottom A′, and has a knob, *i*, on its outer end.

From the above description of parts it will be seen that the body B of the caster may be turned independently of the doors, and the doors, by turning the rod or arbor *f*, may be turned without affecting the body B.

In the caster formerly patented by me the movements of the body and the doors were connected, both being actuated by turning a single rod or handle. This arrangement, although convenient when persons are accustomed to them, is very embar-assing at first, as the doors must be either fully opened or closed before the body can be turned, and consequently it frequently occurs that several essays are made before the desired movement is obtained; but by the

347 improvement herein described this objection is obviated.

I do not claim, separately and broadly, the revolving doors E nor the revolving body B.

But, having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

The combination of the pinions *h h h* (each moving a caster, door, and cruet) and the wheel F with the pinion *e′* of the rod or arbor *f*, the said pinion *e′* gearing into a segment rack, *d′*, in the wheel F, as set forth, so that when this combination is actuated through the knob *i* the caster, cruets, and doors to which they are attached may be rotated independently of the rotation of the body B of the caster.

EDWARD GLEASON.

Witnesses:
JOHN P. VOSE.
ANDREW J. VOSE.

Ex'd: J. A. W. M. M. K.

(Here follows diagram marked p. 348.)

349 *Notice of Motion and Affidavit of John L. Boone and John D. Gagnon.*

In the United States Circuit Court, District of California, 9th Circuit.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

The defendant and his attorney will please take notice that upon the affidavits of John L. Boone, Esq., and John D. Gagñon, copies of which are herewith served upon you, we shall move this honorable court, at the court-room thereof, in the new Appraiser's Building, on the N. E. corner of Washington and Sansome streets, in the city and county of San Francisco, on Monday, the 4th day of December, 1882, at the hour of 11 o'clock on said day, or as soon thereafter as counsel can be heard, to open the time of complainant, so that further testimony may be taken in said case.

Said motion will be based on the ground that the time for taking testimony in said case was allowed to expire on the part of complainants by accident and mistake.

Dated San Francisco, November 21st, 1882.

BOONE & MILLER,
Solicitors for Complainant.

To M. A. Wheaton, Esq., solicitors for defendants.

350 In the United States Circuit Court, District of California, 9th Circuit.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco,

John L. Boone, being duly sworn, deposes and says that he has acted as the principal solicitor for complainant in the above-entitled case; that he instructed his law clerk, John D. Gagnon, to keep the time for closing complainant's testimony open after defendant closed his testimony; that by a mistake of said law clerk the time was allowed to expire; that said mistake was purely accidental, and there was no intention on his part to allow the time to expire without taking further testimony in the case.

JOHN L. BOONE.

Subscribed & sworn to before me this 28th day of November, 1882.

[SEAL.]

GEO. T. KNOX,
Notary Public.

351 In the United States Circuit Court, District of California, 9th Circuit.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

CITY AND COUNTY OF SAN FRANCISCO, *State of California*, } ss:

John D. Gagnon, being duly sworn, deposes and says: I am law clerk for Boone & Miller, attorneys-at-law, at No. 320 California street, and as such law clerk I have charge of the time book of the firm and look after keeping up the time in the various cases in which the firm is interested. I kept open the time for taking testimony in the above-entitled case until July 1st, A. D. 1882, when I understood Mr. Boone to say that the testimony was closed, and I then allowed the time to expire without obtaining any further extension. I afterwards learned that I had mistaken Mr. Boone's statement that he had referred to defendant's testimony when he spoke of the testimony being closed. I thereupon went to
352 defendant's solicitor and tried to get the time opened, but was refused. Affiant says that the time for closing the testimony in said case was allowed to expire by accident and mistake and was not intentional, nor was it by any neglect, but purely a matter of accident and mistake.

JOHN D. GAGNON.

Subscribed and sworn to before me this 28th day of November, 1882.

[SEAL.] GEO. T. KNOX,
Notary Public.

Endorsed: Service and receipt of a copy of within admitted this 28th day of November, 1882. Filed November 28th, '82. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

353 *Complainant's Copy.*

U. S. Circuit Court, Cal.

EMANUEL BRUNSWICK
v.
FERDINAND DE ST. GERMAIN. } 2468.

Additional evidence, taken under order of court opening testimony, for complainant.

Ferroggiard ---------- 67
Mackin ---------- 70

WEDNESDAY, *February* 7, 1883.

Present: Mr. Boone, solicitor for complainant.

(On account of the absence from the city of respondent's solicitor, the hearing is continued until Wednesday, 28th instant, at two o'clock p. m.)

354 WEDNESDAY, *February* 28, 1883.

Present: Mr. Boone, solicitor for complainant; Mr. Harpham, solicitor for respondent.

Additional Evidence. Testimony of N. Ferroggiaro.

Examination-in-chief of N. FERROGGIARO on behalf of complainant by Mr. BOONE:

Q. 1. Please state your name, age, place of residence, and occupation.

A. My name is N. Ferroggiaro; my age, forty years; I live in San Francisco, and I am one of the proprietors of a billiard saloon at 1339 Dupont street.

Q. 2. Do you know the firm of Jacob Strahle & Company in this city?

A. I know one. That is all I know. I only deal with one—stout fellow—Frenchman.

Q. 3. Have you had any dealings with that firm lately, within the last two years?

355 A. The only dealing it was—I buy a billiard table.

Q. 4. You did buy a billiard table of them, did you?

A. Yes, sir.

Q. 5. When was that?

A. I can't say without looking at my book; it was about ten months ago.

Q. 6. What is this paper now shown you?

A. That is the bill he gave me.

Q. 7. And it was from that house whose name appears upon this bill that you purchased a billiard table, was it?

A. The billiard table he sold me himself.

Q. 8. And this is the bill he gave you at the time?

A. That is the bill he gave me at the time; it was in May, I think, 1882; I don't say positive that is the date; that is the time I opened the business, and after about one week I bought the table.

356 & 357 (The bill above referred to, being bill of Jacob Strahle & Co. against J. Demartin and Co., dated May 17th, 1882, for one billiard table, together with one revolving cue rack and fixtures, amounting to $200, is introduced in evidence by complainant and marked "Complainant's Exhibit E.")

Respondent objects to the introduction of the bill, Exhibit E, and also to all testimony in relation to the sale evidenced by said bill, on the ground that said sale was of a date subsequent to the commencement of this suit, and said evidence is therefore irrelevant and immaterial.

Q. 9. What was it that you bought from that firm?

A. I bought the billiard table, cue rack like that (Exhibit B), and the balls and cues.

Q. 10. That was a cue rack like Exhibit B, was it?

A. Yes; exactly like that; the fancy work at the bottom
358 might have been different; the thing on the top like that, the thing on the bottom like that, and the thing in the middle like that (referring to Exhibit B); when I got the table I got an agreement to sell me that with the billiard table.

(Respondent moves to strike out all the testimony of this witness on the ground that it is not rebuttal.)

Waiver of Reading to & Signing Deposition by Witness.

(The reading of the above deposition to the witness and the signing of the same by him are waived by agreement of counsel.)
Continued until Monday, 5th March, at two o'clock p. m.

MONDAY, *March* 5, 1883.

Present: Mr. Boone, solicitor for complainant; Mr. Harpham, solicitor for respondent.

359 *Testimony of John Mackin.*

Examination-in-chief of JOHN MACKIN on behalf of complainant by Mr. BOONE:

Q. 1. Please state your name, age, place of residence, and occupation.
A. My name is John Mackin; my age, forty-six years; my place of residence, Berkeley, and I am a carpenter.
Q. 2. In what business are you at present engaged?
A. I am at present house-building.
Q. 3. Do you conduct a saloon also?
A. I have a place; my wife tends to it. I don't keep any saloon—anything to drink—but keep two billiard tables.
Q. 4. Where is that place?
A. Berkeley.
Q. 5. How long have you run it?
A. About three years.
Q. 6. What kind of billiard tables have you got in that place?
A. I have got Strahle's now.
360 Q. 7. What kind of cue racks have you?
A. I have got two the same style of that there (Exhibit B).
Q. 8. Revolving cue racks?
A. Yes, sir.
Q. 9. From whom did you purchase them?
A. Jacob Strahle & Company.
Q. 10. When did you purchase them?
A. I think it is two years ago last August or September; I am not certain. It was either August or September two years ago.
Q. 11. You bought from him, then, what?
A. I bought two tables with all the materials that goes with them.
Q. 12. And with those two tables were two cue racks?
A. Yes, sir.

Q. 13. Both of those cue racks were like this Exhibit B, were they?

A. Yes, sir.

(Respondent objects to all the testimony of this witness
361 and moves to strike it out on the ground that it is immaterial and not rebuttal, this objection to apply to the preceding and all subsequent testimony of this witness.)

Q. 14. Did you ever work for Jacob Strahle & Company?

A. Yes, sir.

Q. 15. When?

A. A year ago next May and June—part of May and part of June.

Q. 16. What year was that?

A. 1882.

Q. 17. When did you leave there?

A. It was about a week or ten days before the 4th of July, 1882.

Q. 18. How long had you been working for him at the time?

A. About six weeks, I think.

Q. 19. Do you know whether or not at that time Jacob Strahle & Company were making and selling those revolving cue racks?

A. I think they did. I made some myself—that is, I put them together.

362 Q. 20. While you were in the employ of Jacob Strahle & Company?

A. Yes, sir.

Q. 21. You did it for them?

A. Yes, sir.

Q. 22. At their request and under their instructions?

A. Yes, sir.

Waiver of Reading Deposition to & Signing Same by Witness.

(By agreement of counsel the reading of the above deposition to the witness and the signing thereof by him are waived.)

Complainant rests.

(Continued, for taking testimony on behalf of respondents, to Monday, 12th instant, at two o'clock p. m.)

Endorsed: Additional evidence. (By consent, filed in place of original.) Filed Feb. 7, 1884. L. S. B. Sawyer, clerk.

363 COMPLAINANT'S EXHIBIT A.

DEPARTMENT OF THE INTERIOR,

(Vignette.)

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted E. Brunswick January 7th, 1868, No. 72969, for billiard-cue rack.

In testimony whereof I, W. H. Doolittle, acting Commissioner of Patents, have caused the seal of the Patent Office to be [SEAL.] hereunto affixed this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

W. H. DOOLITTLE,
Acting Commissioner.

364 No. 72969.

THE UNITED STATES OF AMERICA:

(Vignette.)

To all to whom these letters patent shall come:

Whereas E. Brunswick, of Chicago, Illinois, has alleged that he has invented a new and useful billiard-cue rack and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said invention, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant to the said E. Brunswick, his executors, administrators, or assigns, for the term of seventeen years from the seventh day of January, one thousand eight hundred and sixty-eight, the full and exclusive right and liberty of making, 365 using, and vending to others to be used the said invention, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed.

Given under my hand, at the city of Washington this [SEAL.] seventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-second.

W. T. OTTO,
Acting Secretary of the Interior.
T. C. THEAKER,
Commissioner of Patents.

Countersigned and sealed with the seal of the Patent Office.

(Here follows diagram marked p. 366.)

367 UNITED STATES PATENT OFFICE.

EMANUEL BRUNSWICK, of Chicago, Illinois.

Letters Patent No. 72969, dated January 7, 1868.

Billiard-Cue Rack.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it know- that I, E. Brunswick, of the city of Chicago, in the county of Cook, State of Illinois, have invented new and useful improvements in billiard-cue racks, and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, making part of this specification, in which—

Drawing No. 1 represents the plain revolving cue rack; and

Drawing No. 2 represents the lock-up rack for private use.

The nature of my invention consists in making the billiard-cue rack so arranged that it may revolve and be detached from the wall.

To enable others skilled in the art to make and use my in-
368 vention I will proceed to describe its construction and operation.

Two circular plates, A and B (drawing No. 1), are firmly secured to a vertical shaft, C. The lower plate A is provided with a rim, *a*, at its outer edge to prevent the butt ends of the cues from slipping off the plate, and the upper plate B is provided with several openings through which the points of the cues are passed. Each plate is provided with a metallic pin, D, which enters a metallic socket, E, inlaid in the stationary brackets F F, and revolve in it. The brackets are secured to a wall, a pillar, or any other object, and support the rack.

I make private cue racks (drawing No. 2), in which the lower plate A forms a bottom to a round box, B, open on top, and divided into compartments C C by partitions *p p*, each compartment having a door, D, hung on hinges and provided with a lock and key. The upper plate E forms a bottom to the box B, and is provided
369 with several holes. The rack, being revolving, is very convenient for handling the cues.

What I claim as my invention and desire to secure by letters patent is—

The revolving billiard-cue rack constructed and operating substantially as and in the manner herein described and specified.

EMANUEL BRUNSWICK.

Witnesses:

J. B. TURCHIN.

JAS. R. HAYDEN.

(Endorsed:) Filed Feb. 7, 1884. L. S. B. Sawyer, clerk.

370 *Certificate of Acting Commissioner of Patents, &c.*

THE U. S. PATENT OFFICE.

(Vignette.)

To all persons to whom these presents shall come, Greeting:

This is to certify that careful search has been made of the digest of this office and no assignment, agreement, license, power of attorney, or other instrument of writing is found of record under or relating to letters patent granted to E. Brunswick, No. 72969, dated January 7, 1868, for "billiard-cue rack."

In testimony whereof I, W. H. Doolittle, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twelfth day of April, in the year of our Lord [SEAL.] one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

W. H. DOOLITTLE.

(Endorsed:) Filed Feb. 7, 1884. L. S. B. Sawyer, clerk.

371 *Notice of Motion for Leave to Amend Answer & Affidavits of F. de St. Germain & L. H. Eckhardt on Same & Order Shortening Time of Service.*

In the United States Circuit Court, Ninth Circuit, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. D. ST. GERMAIN, Defendant.

Complainant and John L. Boone, Esq., solicitor for complainant, will take notice that on Monday, the 17th day of August, 1885, upon the opening of the court on said day or as soon thereafter as councel can be heard, I shall move said court, at the court-room thereof, for leave to file amendments to defendant's answer herein. A copy of such amendments are herewith served upon you. Said motion will be made upon the papers, records, and files in said action, together with the affidavits of F. D. St. Germain and L. H. Eckhardt, copies of which are herewith served upon you, and will be made on the ground that prior to the — day of July, 1885, this defendant did not know that said matter could be given in evidence to defeat
372 the recovery of damages by complainant, and of excusable neglect in not setting the same up in his answer and in not applying sooner for leave to amend, and that justice may be done.

M. A. WHEATON,
Defendant's Solicitor.

Good cause appearing, it is ordered that the time of the service of said above motion be shortened to three days, and that said motion be heard at the time specified therein, August 12th, 1885.

SAWYER, *Judge.*

373 In the United States Court, Ninth Circuit, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

DISTRICT AND STATE OF CALIFORNIA, *City and County of San Francisco*, } *ss:*

F. de St. Germain, being sworn, says he is the defendant in the above-entitled cause.

That prior to the commencement of said action and after the seventh day of January, 1868, he bought several dozens of revolving cue racks from the complainant and his agents, and none of them were marked with the word "patented" affixed thereon or with the day or year in which complainant's patent was issued, nor did they have any notice affixed thereon or in any manner connected therewith to show that said revolving cue racks were patented, as required by section 4900 of the Revised Statutes of the United States, or otherwise.

That complain-t did not affix to any of the revolving cue
374 racks sold by him any notice that the same were patented, as defendant is informed and believes.

That he has seen large numbers of revolving cue racks that were made and sold by complainant and his agents during the lifetime of the patent herein sued upon, and none of them had affixed thereon or in any manner connected therewith the notice required by said section 4900, and said cue racks so made and vended were of such character that the notice required by said section 4900 could easily have been affixed thereon, nor was any notice given that they were patented.

That prior to the commencement of this action this defendant did not know that said revolving cue racks made and vended by complainant were patented.

That prior to the commencement of this action complainant issued and distributed to the trade illustrated circulars of his goods, including said revolving cue rack. A copy of one of said circulars is hereto attached and marked Exhibit "A," and is made a part hereof.

375 That said circular came into affiant's possession in the year 1879.

That affiant has known ever since and for long before the commencement of this suit that complainant's revolving cue racks were not marked patented, but did not know that this fact made any difference in this action, and so did not mention the matter to his counsel, and his counsel, M. A. Wheaton, Esq., was not informed of and was not aware that complainant did not mark his revolving

cue racks as required by section 4900 of the Revised Statutes until the 30th day of July, 1885, when, in a conservation with L. H. Eckhardt, said Eckhardt told his counsel that he (Eckhardt) had never seen any patent marks on any of complainant's revolving cue racks; that said counsel then told said Eckhardt, who is in defendant's employ, that complainant's failure to mark his goods patented would defeat his rights to recover damages in the action, and said Eckhardt and his counsel then informed affiant of the same, and
376 said 30th day of July, 1885, was the first time that affiant knew that complainant's failure to give the notice required by section 4900 of the Revised Statute- made any difference with the result of this action.

F. DE ST. GERMAIN.

Subscribed and sworn to before me this 12th day of August, 1885.

EDW'D CHATTIN,
[SEAL.] *Notary Public.*

In the United States Circuit Court, Ninth Circuit, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

DISTRICT AND STATE OF CALIFORNIA, *City and County of San Francisco,* } *ss:*

L. H. Eckhardt, being sworn, says that he has been in the
377 employ of defendant for the last past five years, and has traveled over almost the whole of the State of California, selling billiard tables and other good- for defendant.

That he has seen large numbers of complainant's revolving cue racks which were made and sold by him or his agents between the year 1868 and the year 1885, as affiant is informed and believes, and that he did not see on a single one of said revolving cue racks any notice or mark that the same were patented.

That he has particularly examined a number of them to see if they had any notice affixed thereon or connected therewith that the same were patented, and he could not find any.

That he has had a great number of conversations with M. A. Wheaton, Esq., in reference to defendants' defense in this action, but in none of them was anything said about complainant's marking his goods.

That prior to the 30th day of July, 1885, he did not know that it made any difference whether complainan-'s cue racks were
378 marked patented or not.

L. H. ECKHARDT.

Subscribed and sworn to before me this 11th day — August, 1885.

[SEAL.] EDW'D CHATTIN,
Notary Public.

Service of within motion to amend, affidavits of F. de St. Germain & L. H. Eckhardt on same, & order shortening time of service and receipt of a copy thereof admitted this 12th day of August, 1885.

JOHN L. BOONE,
Attorney for Plaintiff.

Endorsed: Filed August 14, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

379 *Affidavit of Felix O'Neil on Motion to Amend Complaint.*

In the United States Circuit Court, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

CITY AND COUNTY OF SAN FRANCISCO,
State of California.

Felix O'Neil, being duly sworn, deposes and says that he was in the employ of the defendant, F. de St. Germain, and the firm of Jacob Straple & Co. from about the year 1870 up to the year 1880, a period of about ten years, and that he was during that time the foreman for said F. de St. Germain; that as such foreman he handled and examined every revolving cue rack purchased by said St. Germain from E. Brunswick in Chicago, Illinois, and that every one of said cue racks had a metal plate attached thereto on which was stamped the words and figures "E. Brunswick's patent,
380 Jan. 7, 1868;" that about the year 1873 (affiant does recollect the exact date), when said defendant St. Germain first talked of making revolving cue racks, this affiant called his attention to the patent mark on the cue rack and told him that he had better look out or he would get himself into trouble; that defendant's only reply was "Poo-hoo. I don't care for the patent. I will make them anyhow."

FELIX O'NEIL.

Subscribed and sworn to before me this 15th day of August, 1885.
[SEAL.] JOHN E. HAMILL,
Notary Public.

Endorsed: Filed August 17, 1885. L. S. B. Sawyer, clerk.

381 *Affidavit of Emanuel Brunswick.*

In the United States Circuit Court, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

CITY AND COUNTY OF SAN FRANCISCO,
State of California, } *ss:*

Emanuel Brunswick, being duly sworn, deposes and says that he

Service of within motion to amend, affidavits of F. de St. Germain & L. H. Eckhardt on same, & order shortening time of service and receipt of a copy thereof admitted this 12th day of August, 1885.

JOHN L. BOONE,
Attorney for Plaintiff.

Endorsed: Filed August 14, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

379 *Affidavit of Felix O'Neil on Motion to Amend Complaint.*

In the United States Circuit Court, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

CITY AND COUNTY OF SAN FRANCISCO,
State of California.

Felix O'Neil, being duly sworn, deposes and says that he was in the employ of the defendant, F. de St. Germain, and the firm of Jacob Straple & Co. from about the year 1870 up to the year 1880, a period of about ten years, and that he was during that time the foreman for said F. de St. Germain; that as such foreman he handled and examined every revolving cue rack purchased by said St. Germain from E. Brunswick in Chicago, Illinois, and that every one of said cue racks had a metal plate attached thereto on which was stamped the words and figures "E. Brunswick's patent,
380 Jan. 7, 1868;" that about the year 1873 (affiant does recollect the exact date), when said defendant St. Germain first talked of making revolving cue racks, this affiant called his attention to the patent mark on the cue rack and told him that he had better look out or he would get himself into trouble; that defendant's only reply was "Poo-hoo. I don't care for the patent. I will make them anyhow."

FELIX O'NEIL.

Subscribed and sworn to before me this 15th day of August, 1885.
[SEAL.] JOHN E. HAMILL,
Notary Public.

Endorsed: Filed August 17, 1885. L. S. B. Sawyer, clerk.

381 *Affidavit of Emanuel Brunswick.*

In the United States Circuit Court, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

CITY AND COUNTY OF SAN FRANCISCO,
State of California, } *ss:*

Emanuel Brunswick, being duly sworn, deposes and says that he

book" had not been changed to correspond with the mutilated business books. Defendant was then required to furnish this "private lease book," when a comparison of the items showed that two hundred and fifty or more changes had been made in the business books, evincing, as affiant avers, an utter contempt on the part of the defendant for the proceedings and judgment of this court.

Affiant further says that he has read the affidavit of F. de St. Germain, filed in support of this motion, wherein he says "that, prior to the commencement of said action and after the 7th day of January, 1868, he bought several dozens of revolving cue racks from the complainant and his agents, and none of them were marked with the word 'patented' affixed thereon or with the day or year in which complainant's patent was issued, nor did they have any notice affixed thereon, &c.," and affiant says that such statement is not true, but is, as affiant believes, a wilful misstatement of the fact. Affiant says that he never allowed a single cue rack of his manufacture to be sold or go out of his possession from Chicago, Illinois, without having it properly marked according to law; that upon each revolving cue rack made and sold by him or under his authority
385 at Chicago, Illinois, was attached a metal plate, on which were plainly and distinctly stamped the words and figures "E. Brunswick's patent, Jan. 7, 1868;" that affiant has attached hereto one of said plates which he took off from one of the old cue racks manufactured by him in Chicago, Illinois.

(Here follows brass plate.)

That every revolving cue rack made and sold by him in Chicago had a similar plate secured upon it.

Affiant further says that he believes that this motion is made simply to secure delay and impede the action of this court and to perpetrate a wrong upon this affiant; that the only result of this motion, if granted, would be to hinder justice and injure this complainant.

EMANUEL BRUNSWICK.

Subscribed and sworn to before me this 15th day of August, 1885.
[SEAL] JOHN E. HAMILL,
Notary Public.

Endorsed: Filed August 17, 1885. L. S. B. Sawyer, clerk.

(Here follows diagram marked Exhibit A, page 386.)

387 *Notice of Motion for Leave to File Additional Proofs, &c.*

In the United States Circuit Court, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

To M. A. Wheaton, Esq., solicitor for defendant:

You will please take notice that I will apply to the court, at the

court-room thereof, in the new Appraiser's building, on the northeast corner of Sansome and Washington streets, in San Francisco, California, on Monday, the 31st day of August, 1885, at the hour of 11 o'clock a. m. on said day, or as soon thereafter as counsel can be heard, for leave to file additional proofs in the matter of the motion of defendant for leave to amend his answer on file herein.

Said motion will be made on the ground that compliant [complainant] has since the hearing of said motion discovered new evi-
dence bearing on said motion, of which he was not aware at
388 the time of said hearing, and which is material in the issue involved.

JOHN L. BOONE.
Solicitor for Complainant.

Endorsed: Service and receipt of a copy of within notice admitted this 25th day of August, 1885. Filed August 26, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

389 *Affidavit of Emanuel Brunswick on Motion to Admit Further Testimony on Defendant's Motion for Leave to Amend Answer.*

In the United States Circuit Court, Dist. of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Emanuel Brunswick, being duly sworn, deposes and says that he is the complainant above named; that since the hearing of the motion made by defendant herein for leave to amend his answer in said cause he has come into the possession of a publication published by the defendant in the year 1879, wherein appears an advertis-ment of the cue rack involved in this action, and which said cue rack is represented as a patented article; that affiant did not know of the existence of such paper and advertisement until after said hearing.

EMANUEL BRUNSWICK.

Subscribed and sworn to before me this 31st of August, A. D. 1885.

[SEAL.] JOHN E. HAMILL,
Notary Public.

390 Endorsed: Service and receipt of a copy of within affidavit admitted this 3rd day of September, 1885. Filed September 3, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

391 *Notice of Motion to Admit Further Testimony by Comp't.*

In the United States Circuit Court, Dist of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

To M. A. Wheaton, Esq., solicitor for defendant:

You will please take notice that I will move this hon. court, at the court-room thereof, in the new Appraisers' building, on the north-east corner of Washington and Sansome streets, in the city and county of San Francisco, State of California, on Monday, the 7th day of September, 1885, at the hour of 11 o'clock a. m. on said day, or as soon thereafter as counsel can be heard, to open defendant's motion for leave to amend his answer, heretofore submitted to the court, and admit further testimony herein.

Said motion will be based on the affidavit of Emanuel Brunswick, a copy of which is herewith served upon you, and upon the grounds of newly discovered evidence, which could not with reason-
392 able diligence have been produced at the hearing of said motion.

Said newly discovered evidence consists of a newspaper entitled the Billiard Echo, which was published by the said defendant in the year of 1869, wherein appears an advertisement of the revolving billiard-cue rack involved in this action, in which advertisement said revolving cue rack is represented as a patent article.

JOHN L. BOONE,
Solicitor for Complainant.

The time for serving above notice of motion and affidavit is hereby shortened to three days, so that said hearing will be on Monday, Sept. 7th, 1885.

SAWYER,
Circuit Judge.

Endorsed: Service and receipt of a copy of within notice admitted this 3 day of September, 1885. M. A. Wheaton, att'y for def't. Filed September 3, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

393 *Notice of Motion to Require the Standing Master in Chancery to File His Report on the Accounting.*

In the United States Circuit Court, District of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

To M. A. Wheaton, Esq., solicitor for defendant:

You will please take notice that on Monday, the 30th day of

November, A. D. 1885, at the hour of 11 o'clock on said day, or as soon thereafter as councel can be heard, I will move this honorable court, at the court-room thereof, in the new Appraisers' building, on the northeast corner of Washington and Sansome Sts., in San Francisco, California, for a rule or order requiring the standing master in chancery of this court to file his report on the accounting in this cause. Said motion will be based on the papers, records, and proceedings in this cause, the minutes of the court, and the
394 decision rendered by his honor the judge of the court in the matter of defendant's motion to reopen the cause and *and* allow defendant to amend his answer by setting up a failure of complainant to mark his patented cue racks as required by law.

JOHN L. BOONE,
Solicitor for Complainant.

Endorsed: Service and receipt of a copy of within notice admitted this 25th day of November, 1885. All objections & exceptions reserved. Filed Nov. 25, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, d'p'y cl'k.

395 *Order Restraining the Taking of Testimony by Master in Accounting.*

In the Circuit Court of the United States, Dist. of California.

EMANUEL BRUNSWICK, Complainant,
vs.
F. DE ST. GERMAIN, Defendant.

It is hereby ordered that until and after the hearing of the motion now pending in the above-entitled case for an order or rule requiring the master in chancery of this court to file his report in the matter of accounting in said cause referred to said master that no further testimony be taken by said master in said matter of accounting on the part of either of said parties.

Signed this 24th day of December, 1885.

SAWYER,
Circuit Judge.

Endorsed: Filed December 24, 1885. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

396 At a stated term, to wit, the July term, A. D. 1885, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 5th day of November, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order Denying Motion to Amend Answer, &c.

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN. } No. 2468.

This cause, heretofore argued and submitted to the court for consideration and decision upon the motion for leave to amend the answer and the counter-motion for leave to file additional proofs herein, having been duly considered, it is ordered that said motion to amend be, and the same hereby is, denied.

397 It is further ordered that the motion- to open the cause and for leave to file additional proofs be, and the same hereby are, denied.

398 At a stated term, to wit, the February term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 20th day of May, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order Allowing Appeal Bond Filed and Granting Stay of Execution, &c

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN. } No. 2468.

On motion of M. A. Wheaton, Esq., solicitor for the respondent, it is ordered that an appeal bond to act as supersedeas, in the sum of three thousand dollars, be filed herein, and that a stay of execution for ten days after the entry of a final decree herein be, and the same hereby is, granted.

399 At a stated term, to wit, the February term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Tuesday, the 1st day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The Honorable George M. Sabin, U. S. district judge for the district of Nevada.

Order Allowing Appeal.

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN. } No. 2468.

On motion of M. A. Wheaton, Esq., solicitor for the respondent herein, it is ordered that an appeal from the final decree of said cir-

cuit court, filed and entered on the 27th day of May, A. D.
400 1886, being a day in the February term, A. D. 1886, of said circuit court, in the above-entitled cause, be, and the same hereby is, allowed, and that a certified transcript of the pleadings, depositions, stipulations, and proceedings, be forthwith transmitted to the Supreme Court of the United States.

401 At a stated term, to wit, the February term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Wednesday, the 9th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Present: Honorable Ogden Hoffman, U. S. district judge.

Order Increasing Bond on Appeal to $3,500.

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN. } No. 2468.

On motion of George E. Harpham, Esq., for the appellant, it is ordered that the amount of the bond on appeal to the Supreme Court of the United States herein be fixed at three thousand five hundred dollars instead of three thousand dollars, as heretofore ordered.

402 *Bond on Appeal.*

In the Supreme Court of the United States.

FERDINAND DE ST. GERMAIN, Appellant,
vs.
EMANUEL BRUNSWICK, Appellee.

Know all men by these presents that we, William T. Edwards, Louis H. Eckhardt, George F. Chevalier, Frederick Dreypolcher, Thomas Moore, John V. Fella, and Fred. H. Katelson, are held and firmly bound unto Emanuel Brunswick, said appellee, in the sum of three thousand five hundred dollars, lawful money of the United States of America, to wit: William T. Edwards in the sum of seven hundred and fifty dollars, Louis H. Eckhardt in the sum of two hundred and fifty dollars, George F. Chevalier in the sum of three hundred and seventy-five dollars, Frederick Dreypolcher in
403 the sum of three hundred and seventy-five dollars, Thomas Moore in the sum of seven hundred and fifty dollars, John V. Fella in the sum of three hundred seventy-five dollars, and Fred. H. Katelson in the sum of six hundred twenty-five dollars, to be paid to said Emanuel Brunswick, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 14th day of June, A. D. 1886.

Whereas the above-named Ferdinand de St. Germain has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered by and filed and entered of record in the circuit court of the United States of America of the ninth judicial circuit in and for the district of California on the twenty-seventh day of May, A. D. 1886, being a day in the February, A. D. 1886,
term of said circuit court, in the cause entitled Emanuel
404 Brunswick, complainant, against Ferdinand de St. Germain, respondent, No. 2468:

Now, therefore, the condition of this obligation is such that if the abave-named Ferdinand de St. Germain shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

WILLIAM T. EDWARDS.	[SEAL.]
LOUIS H. ECKHARDT.	[SEAL.]
GEO. F. CHEVALIER.	[SEAL.]
FREDERICK DREYPOLCHER.	[SEAL.]
THOMAS MOORE.	[SEAL.]
JOHN V. FELLA.	[SEAL.]
FRED. H. KATELSON.	[SEAL.]

Sealed and delivered in the presence of—
L. S. B. SAWYER.

UNITED STATES OF AMERICA, *District of California*, } ss:

William T. Edwards, Louis H. Eckhardt, George F. Chevalier, Frederick Dreypolcher, Thomas Moore, John V. Fella, and
405 Fred. H. Katelson, being duly sworn, each for himself deposes and says that he is a householder in said district of California and is severally worth double the amount for which he is bound in the foregoing bond, to wit: William T. Edwards the sum of fifteen hundred dollars, Louis H. Eckhardt the sum of five hundred dollars, George F. Chevalier the sum of seven hundred and fifty dollars, Frederick Dreypolcher the sum of seven hundred and fifty dollars, Thomas Moore the sum of fifteen hundred dollars, John V. Fella the sum of seven hundred and fifty dollars, and Fred. H. Katelson the sum of twelve hundred and fifty dollars, over and above all his just debts and liabilities and exclusive of property exempt from execution.

WILLIAM T. EDWARDS.
LOUIS H. ECKHARDT.
GEO. F. CHEVALIER.
FREDERICK DREYPOLCHER.
THOMAS MOORE.
JOHN V. FELLA.
FRED. H. KATELSON.

406 Subscribed and sworn to before me this 14th day of June, A. D. 1886.

L. S. B. SAWYER,
Comm'r, &c.

Endorsed: Filed June 14, 1886.

The form of the within bond and the sufficiency of the sureties thereon are hereby approved.
July 21st, 1886.

(Signed) GEO. M. SABIN,
Dist. Judge, Dist. of Nevada, Presiding.

407 At a stated term, to wit, the July term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 27th day of September, in the year of our Lord one thousand eight hundred and eighty-six.
Present: The Honorable Lorenzo Sawyer, circuit judge.

Order Allowing Original Exhibit, "The Billiard Echo," to be Transmitted to the U. S. Supreme Court.

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN. } No. 2468.

It appearing to the court that Exhibit "The Billiard Echo," in the above-entitled cause, cannot be duplicated, it is ordered that the original exhibit herein recited may be transmitted to the Supreme Court of the United States with the transcript on appeal herein.

(Signed) SAWYER,
Circuit Judge.

408 *Order Allowing Original Exhibit B to be Transmitted to U. S. Supreme Court.*

In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Northern District of California.

E. BRUNSWICK
v.
F. DE ST. GERMAIN. } No. 2468.

It appearing that Exhibit B, referred to and used on the hearing of the above-entitled cause, cannot be copied, it is now ordered that

the clerk transmit said Exhibit B to the clerk of the United States Supreme Court as a part of the record.

Sept. 30, 1886.

(Signed) SABIN, *Judge.*

Endorsed: Filed Sept. 30, 1886. L. S. B. Sawyer, clerk.

409 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Northern District of California.

EMANUEL BRUNSWICK
vs.
FERDINAND DE ST. GERMAIN. } No. 2468.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, do hereby certify the foregoing four hundred and eight pages, numbered from 1 to 408, inclusive, including diagrams, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, together with complainant's original model, Exhibit B, referred to in the testimony of Emanuel Brunswick, and the original Exhibit "Billiard Echo," a newspaper (except the several pieces making up a revolv-
410 ing cue rack produced by the witness, Frederick Dreypolcher, on the hearing before the master on the accounting and introduced in evidence by the respondent and marked "Respondent's Exhibit 2;" also a cue rack introduced in evidence by respondent on the hearing before the master on the accounting and marked "Respondent's Exhibit 3"), and that the same together constitute the transcript on appeal to the Supreme Court of the United States in said cause.

Seal U. S. Circuit Court, Northern Dist., Cal.

Attest my hand and the seal of said circuit court this 30th day of September, A. D. 1886.

L. S. B. SAWYER, *Clerk.*

411 UNITED STATES OF AMERICA, *ss:*

To Emanuel Brunswick, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the eleventh day of October, A. D. 1886, pursuant to an order allowing an appeal from the final decree of the circuit court of the United States in and for the district of California, wherein Ferdinand de St. Germain is appellant and you are appellee, to show cause, if any there be, why the said decree in the said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable George M. Sabin, U. S. district judge for the district of Nevada, assigned to hold and holding circuit court, this 21st day of July, A. D. 1886, and of the Independence of the United States the one hundred and eleventh.

GEO. M. SABIN,
Dist. Judge, Dist. of Nevada, Presiding.

412 [Endorsed:] No. 2468. In the Supreme Court of the United States. Ferdinand de St. Germain, appellant, *vs.* Emanuel Brunswick, appellee. Citation. Service of a copy of the within citation is hereby acknowledged this 24th day of July, 1886. John L. Boone, solicitor for complainant and appellee. Filed July 24, 1886. L. S. B. Sawyer, clerk.

Endorsed on cover: California C. C. U. S. No. 257. Ferdinand de St. Germain, appellee, *vs.* Emanuel Brunswick. Filed October 28, 1886.

Office Supreme Court U. S.
FILED
JAN 20 1890
JAMES H. MCKENNEY
CLERK

No. 257.

October Term, 1889.

IN THE

Supreme Court of the United States

FERDINAND DE ST. GERMAIN,

Appellant,

vs.

EMANUEL BRUNSWICK,

Appellee.

Brief of the Appellant.

M. A. WHEATON,
Solicitor for Appellant.

Filed *189*

..... *Clerk.*

By ..... *Deputy Clerk.*

In the Supreme Court

OF THE

UNITED STATES,

OCTOBER TERM, 1889.

Appeal from the Circuit Court of the United States for the District of California.

FERDINAND DE ST. GERMAIN,
Appellant,

vs.

EMANUEL BRUNSWICK,
Appellee.

No. 257.

APPELLANT'S BRIEF ON THE APPEAL.

This is an action which was brought by the appellee, Emanuel Brunswick, against the appellant, Ferdinand de St. Germain, for an alleged infringement of U. S. Letters Patent No. 72,969,

granted to said Brunswick January 7th, 1868, for a revolving cue-rack.

The bill was filed October 25th, 1880. A subpœna was duly issued and served, and the defendant duly appeared. February 16th, 1881, a demurrer was filed by the defendant to the bill, stating as the grounds thereof that the complainant had not by his bill made such a case as entitled him in a court of equity to any discovery from the defendant, or to any relief against him.

Also, that the complainant sought by the bill the enforcement of a penalty, and that the discovery demanded, and every part thereof was in aid of the penalty. Also, that the bill did not describe or set forth any new or useful invention or discovery, or any invention or discovery patentable under the patent laws of the United States; but, on the contrary, the descriptions of the alleged inventions contained in said complaint showed that the same were not patentable.

The bill of complaint is in the Record, pages one to three.

The verification of the same is on page four.

The demurrer is on page five.

The complainant waived the penalty asked for

in the prayer of the bill, which waiver is on page six of the Record.

The demurrer was overruled. The order overruling the demurrer is on pages six and seven of the Record.

The defendant St. Germain, duly appeared and filed his answer on the 3rd day of October, 1881. The answer is in the Record from pages seven to nine.

The complainant filed a replication thereto on the 7th day of November, 1881, which replication is in the Record on page nine.

Proofs were taken, and on the 12th day of May, 1884, an interlocutory decree in the ordinary form was filed in favor of the complainant, sustaining the patent and referring the case to S. C. Houghton, Esq., to take an accounting of the gains and profits, and also the damages.

The interlocutory decree is on pages ten and eleven of the printed Record.

The accounting was had, and the Master took testimony and made his report, and found that the defendant had realized eleven hundred and seventy-six dollars ($1,176.00) profit from the manufacture and sales of the patented cue-rack.

The Master's report is in the printed Record, from pages eleven to fourteen inclusive. The testimony taken by him on the reference, is in the Record from page fifteen to page sixty-five, both inclusive. The evidence accompanies the Master's report, as a part of it. Both complainant and defendant filed exceptions to the Master's report. The defendant's exceptions are on pages sixty-five and sixty-six of the Record, and are as following, viz:

"I. For that the said Master in his said re-
"port has found that the number of infringing
"cue racks made and sold by the defendant was
"two hundred and ninety-four, while the evi-
"dence shows that the number did not exceed
"eighty-five.

"II. For that the Master has found that the
"defendant realized a profit of four dollars upon
"each one of said revolving cue-racks, whereas
"the evidence shows that no gains or profits
"were made or realized by the defendant, or if
"any gains or profits were made by the defend-
"ant on the said cue racks it was only a very
"small part of four dollars on each cue rack.

"III. For that the Master assumed to decide
"the amount of gains and profits upon a por-
"tion of the testimony of one witness (Imhaus)

" alone, and avers in his report that said evi-
" dence is uncontradicted, whereas the said evi-
" dence is contradicted and the same is over-
" come by a large amount of preponderating
" adverse testimony."

Both sets of exceptions were overruled by the Court on May 17th, 1886, and on the 27th day of the same month a final decree in complainant's favor was entered in the case. Record, pp. 67, 68 and 69. An appeal was duly taken to this Court; all the orders and proceedings in which are shown from pages 135 to 140 of the printed record.

Assignment of Errors.

The appellant assigns as errors upon this case:

First. That the Court erred in holding that the said letters patent were valid.

Second. The Court erred in entering the interlocutory decree in the complainant's favor.

Third. The Court erred in overruling each of the appellant's said exceptions to the said Master's report.

Fourth. The Court erred in entering the said final decree against the defendant and in the complainant's favor.

Argument.

The first point that we make on this appeal, is that the patent was void for want of patentable invention. The specifications and drawings of the patent are in the record at page one hundred and twenty-five, the specifications being comprised within thirty-five printed lines. There are three figures in the drawings.

Figures 1 and 2 show a revolving cue rack in a vertical position, held by brackets and having a few inches in height of its bottom part, enclosed and divided by partitions into twelve compartments, each one of which has a door provided with a lock and key. The specifications call these "private" cue-racks.

H, of Figure 1, represents a cue in its position, as held by the rack.

Figure 2 shows a cross-section of the lower part of this "private" revolving cue-rack. These "private" cue-racks the defendant has never made. The defendant has only made the plain and simple cue-racks described in the specifications as shown in Figure 3 of the drawings. (See evidence in the record page 91, Q. 14; also page 78, questions 48, 49 and 50.)

The whole invention, so far as the appellant has ever used it, consists merely in changing an

ordinary straight cue-rack into a circular form and setting it on pivots so that it will revolve. It was constructed by simply making two wooden disks—one for the top and one for the bottom—and uniting these two disks by a central shaft, which holds the two disks a proper distance apart. A circular row of holes were bored through the upper disk, through which the small end of the cues were passed and held just as the small ends of the cues were passed and held in the ordinary straight row of holes in the common straight cue-racks. The lower disk was plain, except that it had a raised rim or ledge around the upper edge of its periphery, to prevent the butt end of the cues from sliding off, just as the common-raised ledges were made for exactly the same purpose along the front edge of the bar, on which the butts of the cues rested in the ordinary straight cue-rack. Each one of the disks or "plates," as the specifications call them, was provided with a metal pivot, fixed in its center. These pivots entered and revolved in metal sockets, which were inserted in ordinary stationary brackets, which were secured to the wall or pillar or any other object to support the rack.

As these cue-racks have been constructed, the disks are about twelve inches in diameter at the

bottom and eleven inches at the top. Record, fol. 226.

This patented revolving cue-rack was made in a very simple manner, requiring only the most ordinary mechanical skill. It was for this reason, probably, that so few specific details of construction are given in the specifications of the patent.

The only new idea involved is that of simply making the cue-rack revolving and holding it in brackets which are screwed to the wall instead of making it in the usual straight lines and fastening it rigidly in one position.

This revolving cue-rack simply holds cues just as the straight cue-rack held them. The same means, that of having holes through the upper disk through which the small ends of the cues were passed, and a ledge in front of the lower frame to prevent the cues from sliding off, are used in the revolving cue-racks as were used in the ordinary cue-racks. The putting of the cues in the rack and the holding of them there is accomplished in just the same manner as they were accomplished in the straight cue-rack.

The evidence of the patentee and complainant, Emanuel Brunswick, upon these features of the two cue-racks is on pages seventy-eight and

seventy-nine of the Record, from question fifty-one to and including the answer to question fifty-five, and is as follows:

"Q. 51.—Were the ordinary cue racks made "with a ledge along the front of the lower part "on which the cues stood so as to prevent the "cues from slipping off?

"A.—Some may be, some are not.

"Q. 52.—Were a great many of them made "that way long before you made the revolving "cue rack, to your knowledge?

"A.—To my knowledge, there may have been "some made.

"Q. 53.—Were those cue racks made with the "upper part perforated with holes so that the "upper ends of the cues could pass up through "one of those holes when the cue was put in the "rack?

"A.—The ordinary straight cue racks with "holes in the top; yes, sir.

"Q. 54.—Then, so far as holding the cues is "concerned, does that revolving cue rack hold "the cues in the same way and by the same "means as the ordinary cue racks used to hold "them?

"A.—*Just the same.*

"Q. 55.—With reference to the putting of the

" cues into the cue rack and the holding of them " there, it is the same as it was in the ordinary " old cue rack ?

" A.—*Just the same.*"

While the defendant believed that this patent was void upon its face for want of patentable invention, he still put in evidence, for the purpose of showing the state of the art, three ancient United States Letters Patent.

These are defendant's exhibits numbered respectively 1, 2 and 3. They are in the printed record from pages one hundred and ten to one hundred and eighteen, both inclusive. (Exhibit 1, page 110, fol. 323 to fol. 332.)

This patent showed a revolving dining table, which it described as a self waiting table. It describes a round table set upon legs at the proper height. The central part of the table top is cut away in a circular form, leaving, in the form of a broad ring, enough of the table top to furnish room for the plates, &c., to be used while dining. In the center, covering the space cut away, was a large revolving table, the upper surface of which was raised a little above the outside permanent surface, and covered the entire circular space mentioned. This inner disk was itself a round table and was made to revolve by ordi-

nary appliances, and upon it the different dishes of food were placed.

The guests were to sit around the table, their plates, etc., remaining upon the immovable broad rim which formed the outer part of the entire table, and by turning the central part they could bring any dish setting thereon immediately in front of them which they desired. Even in this patent the statement was made that tables with a central revolving part were common, and this feature *per se* was disclaimed.

Exhibit 2 was a patent granted to George W. Hagey in 1858, and was also for a revolving dining table having a permanent outside rim and revolving center, and operating about the same as Exhibit 1. Its mechanical construction was a little different, as both parts of the table rested upon one central shaft with a spider at the foot of it, instead of having several legs to support it.

Exhibit 3 was a patent granted to Edward Gleason in 1857 for improvements in revolving bottle-castors. This castor was made up in part of niched doors. Each niched door held a bottle, and when the doors were enclosed the bottles were enclosed within them. The body of the castor was so arranged that it would revolve around a common center and carry the doors and

all with it. By means of pinion gear-wheels, which connected with and revolved each one of the niched doors, and one general central gear wheel into which the pinion wheels meshed, and some further appropriate devices, the doors could be opened by revolving them and bringing the decanters which stood within their niches to the outside in easy reach of the thirsty sufferers.

This patent, Exhibit 3, certainly contains subdivisions in a vertical revolving machine in which each subdivision will hold the appropriate object which the machine was made to hold. The idea therefore of forming such subdivisions as are shown in Figures 1 and 2 of the complainant's patent was not new with the complainant.

The complainant's revolving cue rack, like a common table cruet stand or castor, is a machine which performs no service other than to receive and retain articles when the articles are not in use. They are not machines which are used either in processes, in manufacturing, or in any way operating upon other articles. Both in the revolving cue racks and in the table castors, the only movements which they make is to revolve. In both, the only office which is performed is that of receiving and holding as depositories, the different articles for the holding of which they

are appropriately constructed. Many table castors that do not revolve have been made and used for holding the same articles as are held by the revolving castors. The revolving castors are constructed as to their receptacle departments substantially the same as were the castors which did not revolve, constructed in their receptacle departments. The only difference between the two was that one revolved and carried around in a circle, the articles which were deposited in it so as to bring them separately within easy reach, which the other did not.

So with the cue-racks. Their office is simply to receive and hold billiard cues. Many straight cue racks were made and used prior to the invention for holding the same articles that the revolving cue racks hold. The revolving cue racks are constructed as to their receptacle departments just the same as were the cue racks which did not revolve constructed in their receptacle departments. The only difference between the two is that one revolves and carries around in a circle the articles which are deposited in it, so as to bring them separately within easy reach, while the other did not.

The first question is, as to whether or not, in view of the fact that revolving tables and table castors, and other things, were well known, which

received and carried around articles, so that each separate article so held and carried would by the revolving of the machine be brought around within convenient reach of a person, it involved the exercise of invention to change the common straight cue rack into a revolving cue rack, so that by revolving it each separate cue which it held and carried would by the revolving of the cue rack be brought around within convenient reach of a person who desired to take one of those cues from the rack.

Admitting that cues had never been placed, held, and carried upon a revolving apparatus before still other articles had been. Therefore applying the revolving apparatus to the holding and carrying of cues was but the applying of an old kind of apparatus to a new use, with only such mechanical changes as a mechanic would naturally make in adapting the old apparatus to its new use. The mere idea of using the revolving apparatus for cues was only the idea of applying an old apparatus to a new use, which was strictly analagous to the uses to which it had before been applied. The mechanical construction that was necessary to apply the old apparatus to the new use only required that the old cue racks should be made circular in cross section instead of straight. This difference any mechanic

would at once comprehend without stopping to think at all, and he would almost as readily, and certainly without any invention, change the old straight racks into a circular form, put the pivots in them and suspend them in the brackets. When he had completed all this neither he nor the one who had first thought of putting the cues on to a revolving rack would have increased the mechanical or other knowledge of themselves or of the world a particle. The authorities and decisions of this Court which bear upon these points and sustain our position are very numerous.

There is nothing described in the patent in this case except the idea of applying old devices to a new and analagous use, and the exercise of the most ordinary kind of mechanical knowledge in making such application.

Piper vs. *Brown*, 91 U. S., 37.

Terhune vs. *Phillip*, 99 U. S., 592.

Curtis on Patents, Sections 41, 44, 49, 52, 53, 55, 56, 66.

Walker on Patents Section 25 *et seq.*

Atlantic Works vs. *Brady*, 107 U. S., 192.

Vinton vs. *Hamilton*, 104 U. S., on page 492.

Smith vs. *Nichols*, 21 Wallace, on page 119.

Pearce vs. *Mulford*, 102 U. S., on pages 117 and 118.

Hicks vs. *Kelsey*, 18 Wallace, 670.
Crouch vs. *Roemer*, 103 U. S., 797.
Walker on Patents, Sections 37 to 43.
Gardiner vs. *Herty*, 118 U. S., 180.
Western Electric Co., vs. *Ansonia Co.*, 114 U. S., 447.
Penn. Railroad Co., vs. *Locomotive Truck Co.*, 110 U. S., 490.

Also the following cases decided at the present term of this Court.

Day vs. *The Fair Haven and Westville Railway Co.*, 49 O. G., 1364.
Watson vs. *The Cincinnati, Indianapolis, St. Louis and Chicago Railway Co.*, 49 O. G., 1843.
Marchand vs. *Emken*, 49 O. G., 1841.
Aron vs. *Manhattan R'y. Co.*, 10 Supreme Court Reporter 24.

As the record appears to be somewhat voluminous we will here state the portion of its contents which applies to the questions of patentability and infringement in order that the Court may know without reading through the record how much there is in it that has no application to these questions.

In fact there is considerable of the record which need not be noticed at all, as it does not

apply to any questions raised on this appeal. Such, for instance, as the motion for leave to amend the answer and the affidavits filed on which the motion was based, which covers the record from folios 371 to folio 398.

The evidence relating to the questions of patentability and infringement was, of course, taken prior to the entry of the interlocutory decree, and there is but a very small amount of it. All of the oral testimony that was taken prior to the entry of the interlocutory decree is in the printed record, beginning on page 72, at folio 212, and continuing to page 96 at the end of folio 284; then beginning again at page 89, folio 264, and ending at folio 362 on page 123.

For some purpose not very apparent, the complainant stated in his bill that a suit upon the same patent had been brought by the complainant against John M. Brunswick and others in the U. S. Circuit Court in the Northern District of Illinois, and a certified copy of the judgment roll in that case was put in evidence. That judgment roll is in the record, beginning on page 96, at folio 285; it ends on page 109 at the end of folio 319. The decree in the case, or what purports to be the decree, is not signed by the Judge of the Court. This judgment roll, or what is called a

judgment roll, was offered in evidence and marked "Complainant's Exhibit C." It was objected to as irrelevant and also as incompetent, for the reason that it contained no decree signed by the Judge of the Court. Complainant also offered in evidence a letter which purported to be written by W. H. Bradley, or Stoddard, which purports to state the practice of the U. S. Courts in the Northern District of Illinois as to the entry of orders and decrees. It was offered in evidence and marked "Complainant's Exhibit D." It was objected to upon the grounds that the letter was not proved to be an original letter, the signature was not proved, and that it was incompetent as hearsay and the mere statement of a third party; and also as irrelevent, for the reason that it did not apply to any issue in this case. These documents help to swell the record, as they cover it on page 88, folios 260 to 262, and from folios 287 on page 97 to folio 321 on page 110.

The damages were stipulated in the case (folios 314 and 315), and we believe it to have been a friendly suit between brothers and friends, with no real contest, its object being to enable them to assert, as the complainant has asserted in his bill in this case, that said patent had been judicially sustained.

The remainder of the documentary evidence put in prior to the entry of the interlocutory decree was Exhibit A, which was the patent itself. Also Exhibits 1, 2 and 3, which were put in by the appellant, and were the patents for revolving tables and the revolving decanter-holder already described.

The only other Exhibit put in evidence prior to the interlocutory decree was a full-sized model of a revolving cue-rack, marked complainant's Exhibit B. Record, p. 73. fol. 214. Only four witnesses were sworn on behalf of the complainant prior to the entry of the interlocutory decree. Two of these witnesses were Louis Imhaus and the complainant, Emanuel Brunswick, whose testimony is in the record from folio 213 on page 72 to the end of folio 247 on page 84. In his testimony Brunswick simply explains the operation of the cue-rack and undertakes to say that it takes up less room than a straight cue-rack. In his cross-examination, however, he shows that a revolving cue-rack takes up the most room. His testimony does not show or demonstrate anything in the shape of invention. On page 80 he says that they have sold *three which did not revolve to one that did revolve.* On page 81 he says that the cost of revolving cue-racks and the profits made on them

are the same as the cost of the common straight cue-racks and the profits made on them. He also shows that private cue-racks with boxes fixed for lock and key, which did not revolve, were much older than his invention. Beginning near the bottom of page 83, he again repeats that he thinks about one-third of the cue-racks that he sold within the last six months were revolving cue-racks; and on page 84, admits that during the last month, although they had sold some twelve or fourteen cue-racks with the billiard tables, he could not swear that they had sold a single one that revolved.

The next witness sworn on behalf of the complainant, was the said Louis Imhaus. He was an employee of the J. M. Brunswick and Balke Company, the same company of which the complainant was the manager. He testifies to the selling of cue-racks by St. Germain. St. Germain was carrying on business under the firm name of Jacob Strahle and Company. Imhaus testifies fast and fiercely for the complainant, to the effect that the revolving cue-racks were the best cue-racks made; that they were always more in demand than anything else, and everybody, whenever they would see them, would buy them in preference to others. He says: "We sold ten of these to one of the others." In these exag-

gerated features of his testimony, Mr. Imhaus is not sustained by any of the other testimony. In fact, at fols. 251 and 252, he states that they sold ten of the revolving cue-racks to one of any other kind at the time that he was in the employ of Liesenfeld. It so happened, that on the accounting, this same Liesenfeld was a witness. His testimony is on page 51 of the printed Transcript, and he testifies that he did not think that he had sold altogether within the last ten or fifteen years a dozen revolving cue-racks, and *that the most of them that he had out he had to take back again.*

At folio 117 this witness testifies, in his evidence taken on the accounting, that he remembers seeing bills when Mr. Knorp made the racks for St. Germain, and that he made them for four dollars apiece.

Both Mr. Knorp's testimony and Mr. Knorp's bill of the cue-racks made by him for the defendant are in evidence, and they both flatly contradict Mr. Imhaus.

The bill is on page 58 of the record, and Mr. Knorp's testimony is on pages 23 and 24.

The first cue-racks Knorp made for defendant were seventy-eight dollars per dozen, or six and a half dollars each. The next seven lots ranged

from seven dollars to eight dollars and a quarter each. The last dozen Mr. Knorp sold to defendant for sixty-six dollars, or five dollars and a half each; but Mr. Knorp testifies that he made up the last dozen of his own notion, kept them on hand for six months and then offered them to defendant at his own price. He made no more of them. The bill shows that the last dozen were of maple, which material Mr. Liesenfeld testifies, at folio 161, was the cheapest wood that he could get them made of.

It seems hardly fair that the testimony of Imhaus should be given so much preference.

The only witness sworn on the part of the defendant prior to the interlocutory decree was St. Germain himself. His evidence is in the transcript, beginning on page 89, at folio 264, and ends on page 96, at the end of folio 284. Afterwards complainant called two other witnesses. One of these was N. Ferroggiaro, whose testimony is in the printed transcript, pages 121 and 122; and the other was John Mackin, whose testimony is in the record at pages 122 and 123. Ferroggiaro's testimony was given February 28, 1883. He merely testifies that about ten months before he testified he had purchased a billiard table of the defendant, and received a bill thereof

of Jacob Strahle & Co. against J. DeMartin & Co., dated May 17, 1882, for a billiard table and revolving cut-rack, and fixtures amounting to two hundred dollars ($200), which bill was put in evidence as complainant's Exhibit E. (See the bill at page 110). All of this testimony was objected to, for the reason that it related to a transaction which had occurred long after the commencement of the suit. The witness, John Mackin, testified that he had a place with two billiard tables in it at Berkeley, which his wife had tended; that he ran it about three years; that at present he had Strahle's tables and revolving cue-racks, which he believed he had purchased two years ago the last August or September; this would have been in August or September of 1880. He also testifies that he worked for the defendant in May or June of 1882 for six weeks, and he thinks that during that time they were putting together and selling the revolving cue-racks; that he did it for them.

The foregoing comprises the substance of all the evidence that was put in prior to the entrance of the interlocutory decree.

We respectfully submit that the patent is void for want of patentable invention, whether it is read alone or in connection with the testimony taken in the case.

If our position is correct in claiming that the complainant's letters patent are void, for the reason that they do not cover any patentable invention, and this Court so decides, then of course there is no occasion to look any further into the record.

If, however, the Court decides that the patent does cover a patentable invention, then we insist that errors were committed on the accounting; that under the testimony taken no profits were shown to have been gained or realized by the defendant, and that the exceptions to the Master's report should have been sustained, and the final decree for over eleven hundred dollars against the defendant should not have been entered.

We here refer to the testimony taken on the accounting as briefly and succinctly as we can, and fairly inform the Court of what it consists.

A large part of this testimony was taken solely for the purpose of finding out how many cue-racks were manufactured and sold by the defendant, and what the same cost. The evidence shows that both the complainant's company and the defendant were in the habit of disposing of their cue-racks without usually making any mention in their books as to what kind of cue-racks were sold, and it was difficult therefore to ascertain the number.

Mr. Imhaus, in his testimony at folio 129, in referring to the complainant's company in whose employ he is, in answer to the question: "Don't "you know that not one-quarter of the cue-"racks sold by your firm in 1884 were revolving "cue-racks?" testified: "I know, I think, that one-"half of them were revolving cue-racks; *we don't* "*put down in the books a statement of the kind of* "*cue-racks sold, whether revolving or wall racks.* "Our firm gets all our goods from our firm "East."

"Q. Have you no documents that will show "what proportion of the cue-racks your firm has "sold during the last year were revolving cue-"racks, and what proportion of the other kind?"

"A No; *we cannot tell by the cost of them* as they "appear on the bills, because some of *the other* "*cue-racks cost the same; we can't tell from the prices* "*they are sold at, because they go with the billiard* "*tables.* It is very seldom that we sell a cue-"rack by itself. In selling them with the bil-"liard tables *there is no way of telling what kind of* "*a rack is sold; they are sold as a part of the outfit;* "*the prices are the same, whether the ordinary cue-*"*rack is furnished with the table or a revolving cue-*"*rack.* If we sell an East Lake wall rack that "costs three dollars and seventy-five cents and a

" revolving cue-rack that costs the same, the " profit is the same, of course."

The same state of facts existed with regard to the defendant.

Evidence of Imhaus, folios 118 and 119; of Eckhart, folios 151 to 158.

The Master found and decided that the defendant had sold two hundred and ninety-four infringing cue-racks. While we do not think there was any fair basis for making the number nearly so large, we shall not ask the Court to wade through the testimony to decide whether the number was right or wrong. We will rest this branch of the case upon the proposition that there was no evidence introduced which justified the Master in finding that there was a profit of eleven hundred and seventy-six dollars, or in fact any amount whatever made by the defendant on the sales of the revolving cue-racks.

The rule of law applicable to the taking of accountings in patent cases, is summarized by this Court in the case of *Dobson* vs. *Hartford Carpet Company*, 114 U. S., 444 and 445, in the following language:

" This Court has, in a series of decisions, laid " down rules as to what are to be regarded as

" 'profits to be accounted for by the defendant,'
" and what as 'actual damages,' in suits for the
" infringement of patents; and no rule has been
" sanctioned which will allow, in the case of a
" patent for a design for ornamental figures,
" created in the weaving of a carpet, or imprint-
" ed on it, the entire profit from the manufacture
" and sale of the carpet, as profits or damages,
" including all the profits from the carding, spin-
" ning, dyeing and weaving, thus regarding the
" entire profits as due to the figure or pattern,
" unless it is shown, by reliable evidence, that
" the entire profit is due to the figure or pattern.
" It is a matter of common knowledge, that there
" is an infinite variety of patterns in carpets, and
" that, between two carpets, of equal cost to
" make, and equal merit as to durability of fab-
" ric and fastness of color, each with a pattern
" pleasing to the taste, one having a design free
" to be used, and the other a design protected
" by a patent, the latter may or may not com-
" mand in the market a price larger than the
" former. If it does, then the increased price
" may be fairly attributed to the design; and
" there is a solid basis of evidence for profits or
" damages. But, short of this, under the rules
" established by this Court, there is no such
" basis. The same principle is applicable as in

" patents for inventions. The burden is upon
" the plaintiff, and, if he fails to give the neces-
" sary evidence, but resorts, instead, to inference
" and conjecture and speculation, he must fail
" for want of proof. There is another sugges-
" tion of great force. The carpet with the in-
" fringing design may be made on an infringing
" loom, and various infringing processes or mech-
" anism or carding, spinning or dyeing may be
" used in making it, and if the entire profit in
" making and selling it is necessarily to be at-
" tributed to the pattern, so it may as well, on
" principle, be attributed to each of the other
" infringements, and a defendant might be called
" on to respond many times over for the same
" amount. There is but one safe rule—to re-
" quire the actual damages or profits to be es-
" tablished by trustworthy legal proof.

" It is not necessary to cite at length from the
" cases decided by this Court on the subject. It
" is sufficient to refer to them as follows: *Liv-*
" *ingston* vs. *Woodworth*, 15 How., 546; *Seymour*
" vs. *McCormick*, 16 How., 480; *Mayor of New*
" *York* vs. *Ransom*, 23 How., 487; *Mowry* vs.
" *Whitney*, 14 Wall., 620; *Philip* vs. *Nock*, 17
" Wall., 460; *Littlefield* vs. *Perry*, 21 How., 205;
" *Birdsall* vs. *Coolidge*, 93 U. S., 64; Cawood Pat-
" ent, 94 U. S., 695; *Blake* vs. *Robertson*, 94 U. S.,

" 728; *Garretson* vs. *Clark*, 111 U. S., 127; *Black*
" vs. *Thorne*, 111 U. S., 122. The true rule,
" which applies also to a patent for a design, was
" formulated thus, by this Court, in *Garretson* vs.
" *Clark*: 'The patentee must, in every case, give
" 'evidence tending to separate or apportion the
" 'defendant's profits and the patentee's damages
" 'between the patented feature and the unpat-
" 'ented features, and such evidence must be
" 'reliable and tangible, and not conjectural or
" 'speculative; or he must show, by equally re-
" 'liable and satisfactory evidence, that the profits
" 'and damages are to be calculated on the whole
" 'machine, for the reason that the entire value
" 'of the whole machine, as a marketable article,
" 'is properly and legally attributable to the
" 'patented feature.' The case of *Manufacturing*
" *Co.* vs. *Cowing*, 105 U. S., 253, was a case fall-
" ing within the last clause of the rule thus
" stated, and was an exceptional case, as was
" stated by the Chief Justice, in the opinion.
" The general rule was recognized in that case,
" and the exception was made in regard to the
" oil well gas pump there involved, because there
" was only a limited and local demand for it,
" which could not be, and was not, supplied by
" any other pump."

The Master for some reason was very partial to the testimony of Mr. Imhaus. At folio 46 the Master in his report says:

"Mr. Imhaus testifies that when he was in the "employ of respondent the price asked for the "revolving racks when he sold them was ten "dollars each; that when he entered the employ "of respondent in March 1879, the list price of "the latter for these racks was reduced to "ten dollars, having been prior to that time a "higher figure. His testimony in this regard is "not disputed."

"The average profit of respondent upon each "of the two hundred and ninety-four revolving "racks sold by him as aforesaid is, therefore "concluded to have been four dollars, making "his total profits upon said racks eleven hun-"dred and seventy-six dollars."

The foregoing extract states what is in fact the Master's basis for the accounting. *It was not proved by the testimony that the defendant actually sold the cue racks for the prices named in his price list.* The evidence is that they sold billiard tables with the entire outfit at certain or rather uncertain prices. *The cue-racks were not sold by themselves* and no one can possibly tell how much the cue-racks, either of the complainant or of the defend-

ant, were sold for. It appears that competition was close and the outfits were sold at different times and to different customers at different prices. It does not appear that the price lists governed the prices at which sales were made. In fact, we think the Court will take judicial notice of the fact that manufacturers usually have price lists but usually sell at large discounts below those price lists. This same witness, Imhaus, testifies at folios 118, 119 and 120 as follows:

"Q.—Do you know how much the Brunswick "and Balke Company get apiece for them when "they sell them?

"(The same objection by respondent.)

"A.—Eight dollars. When Mr. St. Germain sold "them I believe his list price was ten dollars, "when I was there.

"Respondent objected to, and moved to strike "out the last clause of the testimony of the wit- "ness on the ground that if Mr. St. Germain had "a price list the list is the best evidence.)

"The Witness—When I was employed by Mr. "St. Germain ten dollars is what I asked for "them when I sold them. While I was em- "ployed by Mr. St. Germain *these revolving cue "racks used to go with the tables as a part of the out- "fit when the table was sold. In such cases they did*

" *not make a charge for the cue-rack.* The idea was " that the table was sold with the complete out- " fit. The cost of the table was first calculated " and the selling price of each one of those arti- " cles was added. I would not call that giving a " cue-rack away. If a man ordered a different " kind of cue-rack he had to pay so much extra " —that is, if he ordered any kind of an extra " cue-rack he would be charged the price over " and above what an ordinary cue-rack costs. " For instance, Mr. Scott paid seventy-five dollars " for his cue-rack, which was made to order.

" Cross-examination of Louis A. Imhaus:

" In response to questions of Mr. Wheaton, " the witness testified, on cross-examination, as " follows:

" When I say that competition is close in the " billiard-table business, I mean that one runs " after a customer and the other one runs after " him, *and deductions are made.* For instance, if " we ask a man three hundred and fifty dollars " for a table, they will offer him one for three " hundred, and he comes back and we offer it to " him for two hundred and seventy-five, and so " on. The profit which is made by the Bruns- " wick and Balke Company here is figured at " about one hundred per cent. but that is out- " side of expenses—*that is not net.* For instance,

"a billiard table that we wonld sell for "three hundred and fifty dollars proba- "bly would cost us, laid down here, as I "figure, about a hundred and seventy-five dol- "lars, not more; but then, *outside of that, we have "a good many outside expenses—traveling expenses, "saloon expenses, and so forth—that is not inclnded.* "If I sell you a table to-day, we figure the cost "of all the articles that go with it, and it aver- "ages about one hundred per cent. profit, with- "out calculating city expenses, and traveling "expenses, and saloon expenses, or any of "those things."

Not a single witness in the case fixes, or attempts to fix, the prices at which the defendants sold those cue-racks.

There was no justification in the Master's throwing out Dreypolcher's testimony, which was neither contradicted nor impeached, and falling back upon that of Imhaus which was so largely contradicted and largely impeached by such contradiction, and then holding that the defendant had received in money ten dollars each for the cue-racks merely because Imhaus testified that ten dollars was the amount fixed by the price list, especially as Imhaus himself testifies that the companies were competing and selling their

goods under regular prices and also testifies that there were so many other "outside" expenses connected with the business which made the *net* profits much less than they would appear when such other expenses were not taken into the account. Record, folios 119 and 120.

The witnesses all agree that the cue-racks sold by defendant were obtained by him in the following manner: He employed the wood-working manufacturers to turn and bore and bring to him all the different pieces which would make up the entire cue-rack when they were put together. They were brought to the defendant simply turned and bored and in separate pieces, or, as one witness and the Master terms it, in a "knock down" condition. See the Master's report, fol. 44.

The principal witness and nearly the only testimony given as to the cost to the defendant of putting the cue-racks together, staining, furnishing and finishing them up, was the witness Dreypolcher, and his testimony, which is in the record, folio 133 to folio 143.

For some reason or other entirely unaccountable to us, the Master refused to give any credence to Mr. Dreypolcher's testimony. The Master says in his report at folio 44:

"As to the amount of labor and expense required " to be expended upon them before they were " ready for the market, respondent's foreman " has testified upon the reference, but his state- " ments are so obviously exaggerated that no " weight has been given by the Master to his " testimony."

Mr. Dreypolcher was neither impeached nor contradicted, nor were his statements "obviously," or, as we believe, at all, exaggerated. His testimony was to the effect that it was one day's work for a man to take the parts of a revolving cue-rack brought in the knocked-down condition, put them together, and stain, rub, varnish and finish the cue-rack. Not a single witness has testified that it would not require that much time to do all of that work. Some have testified as to the length of time that it would require to do some particular acts which comprised only a part of the work of putting together and finishing up the cue-rack ready for sale, but none have contradicted Mr. Dreypolcher. However, this is probably unimportant, as no profits were proved in any way. It only assists to show whether the Master's report is a fair one or not. The main fact is that there is no evidence which proves at what prices the defendant sold the revolving cue-racks. Nor is

there any evidence to show or prove that he ever received a dollar for those cue-racks more than what they actually cost him. In fact there is no evidence to show or prove that he did not actually lose money on the manufacture and sale of those revolving cue-racks.

According to the rules laid down by this Court as before cited, the burden of proof is upon the complainant to establish the fact that the defendant received more money for the cue-racks than he paid out for them; and as he has not established such fact, the second exception of the defendant to the Master's report should have been allowed.

There is also another reason why the exception should have been allowed.

The rule before quoted is as follows:

"The patentee must, in every case, give evi-
"dence tending to separate or apportion the
"defendant's profits and the patentee's damages
"between the patented feature and the unpat-
"ented features, and such evidence must be re-
"liable and tangible, and not conjectural or
"speculative; or he must show, by equally reli-
"able and satisfactory evidence, that the profits
"and damages are to be calculated on the whole
"machine, for the reason that the entire value of

" the whole machine as a marketable article, is " properly and legally attributable to the patented " feature."

The patentee has not complied with either of the foregoing alternatives. The patented feature of the cue-rack is its being revolving instead of being stationary. Not the slightest attempt has been made by the patentee to show any difference in money value between the racks which revolved and those which did not. No attempt is made to separate or apportion the defendant's profits and the patentee's damages between the patented and unpatented features.

It is in evidence that there was no absolute necessity for the revolving cue-racks. The revolving cue-racks performed no essential service that was not performed by the straight cue-racks. They held cues and did nothing else. The straight cue-racks were, of course, open for the defendant to sell without infringing upon any patent. The evidence shows that the profits upon the ordinary cue-racks were the same as they were upon the revolving cue-racks. They cost the same and they sold for the same. The most that can be said for the revolving cue-racks is that they struggled for awhile to get into fashion and ultimately failed. The patent expired Janu-

ary 7th, 1885. They have since been open to the defendant and the public to make and use, but the defendant and the public have declined to use them. They have gone entirely out of fashion. We have before referred to the testimony which shows this. Record, folios 160, 151 and 152, also last half folio 136.

There is not a particle of evidence which has the least tendency to show that the defendant made a single dollar more by selling the revolving cue-racks than he would have made if he had sold the straight cue-racks. Neither is there a particle of evidence which proves that he could not have supplied the straight cue-racks in every instance in which he supplied a revolving cue-rack. It is not shown that he would have lost the sale of a single cue-rack or a single billiard table if he had absolutely refused in every instance to sell a revolving cue-rack.

There is, therefore, no value proved for the invention, nor is there a particle of evidence which proves that the defendant ever received a dollar for the invention, however extensive his infringements may have been. Our case, therefore, comes under the rule of law as laid down by this Court to the effect.

As no evidence was introduced tending to

separate or apportion the defendant's profits or the patentee's damages between the cue-racks which revolved and those which did not revolve, and as no evidence was introduced tending to show that the entire value of the revolving cue-racks as marketable articles was owing to the fact that they revolved, no profits or damages were legally proved, and none should have been allowed.

Neither has there been any attempt made to prove that the complainant has suffered any damages to his business, or otherwise on account of the making and selling of revolving cue-racks by the defendant.

We respectfully urge, that upon all the grounds the decree should be reversed, and an order made that the complainant's bill should be dismissed.

M. A. WHEATON,
Solicitor for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1889.

No. 257.

FERDINAND DE ST. GERMAIN,

Appellant,

vs.

EMANUAL BRUNSWICK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CALIFORNIA.

BRIEF FOR APPELLEE.

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In the Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 257.

FERDINAND DE ST. GERMAIN,
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vs.

EMANUEL BRUNSWICK,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

APPELLEE'S BRIEF.

Statement of Facts.

The Letters Patent No. 72,969, on which this suit is based, were issued to Emanuel Brunswick, the appellee herein, on the 7th day of January, 1868, for an "Improved Billiard Cue Rack."

The distinctive feature of the invention was its adaptation to be mounted on bracket bearings against a wall, so that the rack could be revolved upon its bearings above and below, in order to admit of an inspection of the billiard cues, and permit any one of them to be easily removed.

The invention was a decided improvement because it economized space upon the walls, was a much neater rack than the old style rack, extending along the wall, and permitted a player to select one of a number of cues from the rack from his position in front of the same without moving from one point to another in front of the rack.

The Chicago Suit.

In January, 1873, the patentee commenced a suit in equity in the Circuit Court of the United States, in and for the Northern District of Illinois, against John M. Brunswick, Moses Bensinger, Anton F. Troescher and Leo Schmidt to restrain an alleged infringement upon the patent. The defendants appeared and answered in said suit, denying that Emanuel Brunswick was the inventor of the improvements in cue racks described and claimed in said letters patent, and that said letters patent were void. Testimony was taken in said case and the matter fully argued before the Court, whereupon Judge Blodgett, of the United States Circuit Court, on May 17th, 1877, rendered a decree therein finding and adjudging that said Emanuel Brunswick was the true and first inventor of the invention described and claimed in said letters patent, and adjudging and decreeing that said letters patent are good and valid in law, and that the defendants had infringed upon the rights guaranteed by the patent (see Transcript, Exhibit C, page 97, to and including page 109).

The defendant's answer in this case avers that the Illinois suit was fraudulent and collusive, but, as the Court will observe, no testimony whatsoever was offered on this point, and the complainant's own evidence as to the good faith of the suit at fol. 216, page 74 of the Transcript, is absolutely uncontradicted.

The Present Suit.

This suit was commenced in October, 1880, in the United States Circuit Court, in and for the District of California, by the filing of a bill in equity, page 1. Subpœna was duly issued and served, and on the 16th day of February, 1881, the defendant filed a demurrer in the suit (see Demurrer, page 5, Transcript), whereby the respondent, by his counsel, attempted to have the Court declare the letters patent void on its face for want of invention. This pleading was obviously frivolous. There is no such ground of demurrer, "that the complaint does not describe or set forth any new or useful invention or discovery, or any invention or discovery patentable under the Patent Laws of the United States," Such defenses must be raised by plea or answer.

Walker on Patents, 446.

After argument and submission of the points raised by counsel, the Court made an order overruling the demurrer (Transcript, pages 6 and 7), allowing the defendant to answer upon payment of costs, which was done.

The answer of the defendant denies the validity of the patent sued on, denies its utility or value, denies that any substantial defense was made to the Chicago suit, alleges that the latter suit was fraudulent and collusive, and sets up a number of prior patents to anticipate the invention. Finally, it denies infringing upon the patent.

The only attempt made to invalidate the patent was by way of anticipation, and for this purpose the defendant set up at the hearing three prior patents, but by no means all of the patents set forth as anticipatory in the answer. The only prior patents offered in evidence by way of anticipation were Letters Patent No. 18,042, issued to Farrar & Farrar, August 25th, 1857, for Im-

provement in Self Waiting Tables, Transcript, pages 111-113; Letters Patent No. 19,773, issued to G. W. Hagey, March 30th, 1858, "Improvement in Self Waiting Tables," pages 114–116, Transcript; Letters Patent No. 18,740, issued to Edward Gleason, December 1st, 1857, for "Improvements in Revolving Bottle Casters," pages 116–118, Transcript.

The Issues.

The first issue raised by the answer is the validity of the patent. No attempt was made to invalidate the patent by the proofs other than an attempt to have the Court declare that no invention was involved in making a billiard cue rack to revolve when self-waiting tables and revolving casters had been previously made to revolve. No expert was called. The defendant alone attempted to show the anticipation by his own testimony, which was given as to this point under objection, as he admitted that he was not even a practical mechanic (Transcript, fol. 264, p. 89). The whole of his testimony on page 92 amounts to nothing in view of this admission.

No claim was made by defendant that a revolving rack for holding billiard cues had ever been made before complainant's invention. By referring to the drawing of complainant's patent Exhibit A, page 124, it is plain to be seen that the cue rack is supported between two brackets N, N^1, which are secured against a vertical wall. This feature alone is sufficient in the absence of evidence to show that such construction had been used before, to support the claim of invention, but the entire construction and arrangement is new. It provided a simple cue rack that occupied but little space and could be placed in an angle or corner of a room entirely out of the way. The player can stand in one position and turn the rack so as to present each

cue for his inspection without moving from his place. It is cheaper than a flat rack, yet is much more desirable. It was shown that in billiard saloons wall space was desirable for hanging pictures, etc., and that ordinary racks could not be put in where there was paneling on the walls. The revolving rack economized wall space and could be used in places where other racks were out of the question (Trans., p. 85, fol. 251).

The invention was therefore useful as well as ornamental.

The self-waiting tables of Farrar and Hagey were simple turn-tables supported horizontally on a central post so as to rotate in a horizontal plane and in no way suggest a revolving rack supported on a wall by two brackets, one below and one above the rack, and the same may be said of Gleason's table caster. Neither of the devices represented in these patents could be used as a revolving wall rack for billiard cues. Complainant's rack does not infringe either of said prior patents, hence they cannot anticipate his invention.

The mere fact that a revolving billiard cue rack could not be practicallly constructed to operate on the principle of construction shown in these self-waiting tables and table-caster devices is evidence that it required invention to make a revolving rack that would operate practically for holding billiard cues.

Judges BLODGETT and SAWYER were both satisfied that complainant's patent did involve invention and that the patent was valid. It would be subversive of the patent system to hold that because one thing had been adapted to be held in a revolving table every other method of mounting and arranging a rack to adapt it for special uses would be within the ordinary knowledge of a mechanic.

Suppose the patentee of one of the self-waiting tables or of the table caster had handed his patent to a skillful mechanic and requested him to make a revolving rack to hold billiard cues, could that mechanic, *without*

inventing anything, have proceeded by the simple knowledge of his trade and made a rack like complainant's? We apprehend not. The first thing he would say is that a rack built on this principle must stand on the floor and be supported on it. This would bring the rack too low. The billard player would have to get down on his knees to examine the cues as the table was revolved. The next thing that would suggest itself would be that a special table must be made elevated high enough above the floor for the turn table to rest on to bring the cues opposite the eyes of the player. He would then find that the weight of the table resting on its lower support only would make the table "wobble" and turn so hard that it would be almost impossible to revolve it. If this should be the case, and we contend it is a fact, then he would say that the idea was impracticable, and besides this it would be in the way and would consequently be a nuisance. It was only when the new idea of using two brackets, one as a gearing above and the other as a bearing below, was thought of, and the placing them on the wall *so as to place the rack within reach and yet out of the way* that the practicability of the revolving idea for this purpose would be apparent, and to do this would require invention. Why? Because there was no similar device in existence, nothing to work from to enable the mechanic to know how it would operate. The idea must first be thought of, then the parts must be adapted to the new arrangement, and even then the constructor would have to test the practicability of the plan, for who can foresee how a new arrangement and adaptation of a thing will operate until it has been tried and demonstrated?

It has been recently held by this Court in the Telephone Cases, 126 U. S., 572, that where a new use of an old thing consists in combining it with other things in a new organization, invention is present. Therefore if the appellee had done nothing more than to take the

revolving table or the caster and combine them with a top bearing, and support the whole on brackets in such a manner that the organization could be used for holding billiard cues, this would be invention.

Again this Court has said in Cantrell vs. Wallick, 117 U. S., 689; " A great majority of patents are for im-" provements in old and well known devices, or on " patented inventions. Changes in the construction of " an old machine, which increase its usefulness are pat-" entable * * * So a new combination of old de-" vices, whereby the effectiveness of a machine is " increased, may be made the subject of a patent." Citing Loom Co. vs. Higgins, 105 U. S., 580.

Hence in view of this doctrine if the appellee had done nothing more than to make such an improvement upon the table castor, or the revolving table as would enable it to be used as a billiard cue rack, it would nevertheless under the decisions of this Court amount to invention.

The essence of an invention has been happily defined by this Court in Valve Co. vs. Gauge and Valve, 113 U. S., 157; as the " thing which gives success " to the patented article. And it was there held that the change which gave the success, even though small in view of previous structures, constituted invention. Therefore, as the revolving cue-rack filled a want, met with immediate demand, and was, as was testified by one witness, " all the go," it is apparent that the change, even assuming that there was merely a change of the old caster or self-waiting table into a cue-rack, was an invention within the doctrine there laid down.

Moreover, the burden of proof is upon the defendant to establish the facts set up by him, to show lack of novelty, beyond a reasonable doubt (Cantrell vs. Wallick, 117 U. S., 691).

Defendant has offered no testimony on the question of lack of novelty other than his own, and as will be

seen hereafter, his own testimony is of such a character that it is not entitled to any weight with this Court.

But, as has been seen above, the patentee went a great deal further and did a great deal more. There are a variety of additional elements found in the cue rack as described, which are put together. in a novel manner, moreover the rack itself is novel, and operates quite differently from the table rack and casters, and accomplishes what the latter cannot possibly accomplish.

The considerations above discussed make this a complete case of invention under the rules laid down by the law and the authorities. They answer fully every requirement of the patent law. The simplest inventions are often the most difficult to conceive. It is easier to carry the mind to an entirely new problem than to pick a flaw in or add to an old one. The long existence and use of a device familiarizes the mind with it, and it is difficult to disassociate it from itself to convince the mind that some other way would be a better way. In this sense the discovery of James Harley that molten metal could be caused to take a rotary motion by injecting the metal diagonally into the mould was a new invention (McClurg vs. Kingsland, 1 How., 202), and so with scores of the most important inventions.

We apprehend, therefore, that no difficulty will be found in sustaining Judges BLODGETT and SAWYER in their decisions on this point.

THE DEFENSE OF BAD FAITH IN THE CHICAGO SUIT:

It is submitted that this defense is not entitled to any consideration whatsoever. With regard to the defense in the Chicago case the testimony of Emanuel Brunswick from question 12, page 74, to answer to question 14, same page, Transcript, shows that the suit was not friendly nor was it compromised before the

decision. Defendant put in no testimony whatever on this point; consequently the allegations of collusion and fraud in the answer amount to nothing. The record is in evidence in this suit and speaks for itself. Mr. Brunswick's testimony on this point is positive and uncontradicted, and must be controlling on the Court.

The Infringement.

The infringement of the patent by the defendant was fully proven. St. Germain testifies (Q. 1, p. 91 to answer to Q. 3, p. 92, Transcipt) that he had made cue racks like Exhibit B within three years, and on page 22, fol. 70 (in 1884), he says: "I have had some of "them (revolving cue racks) made this year," showing that he continued his infringement after the suit had been begun. The identification by complaimant's witnesses of racks similar to Exhibit B. which had been sold by defendant is complete, and not rebutted. This is sufficient under the ruling of this Court in Bennet vs. Fowler, 8 Wall., 445.

The Accounting.

The Master finds in and by his report that the proofs show that the defendant had made and sold 294 infringing cue racks, and reports the gains and profits received by defendant to be $1,176.

This finding is based upon a record which would justify a finding a hundredfold the amount.

Character of Testimony.

The character of the testimony given by the defendant and his witnesses is certainly most extraordinary.

The attention of the Court is particularly directed to the testimony of the appellent, St. Germain, on pages 28, 29, 30 and 31 of the Transcript.

The Master could not refrain from directing the attention of the Court to the unlawful and contemptuous actions of the appellant (see Master's Report, lines 39 to 41) Transcript, where he has called special attention to it.

He says : "The Master feels compelled to particu-
" larly direct the attention of the Court, not only to
" the facts above referred to relating to the falsification
" of entries in respondent's books of account, but also
" to the character of the testimony he has given upon
" the reference."

How the defendant could have dared to appeal such a case to this Tribunal is beyond comprehension. One would think that the appellant would for very shame have paid the judgment in full, in the hope of thereby being able to hide the record forever. Instead of that he brings it into this Court, and offers it to the criticism of the Supreme Judges of the land.

It clearly appears from the record that after the Circuit Court had rendered its interlocutory decree adjudging that the appellant had infringed upon the patent, appellant deliberately instructed his *factotum* Eckhardt to alter the books (see testimony on page 30 of Transcript), so that they would not show what style of cue racks had been sold. The Master detected 285 falsified entries.

He says in his report (fol. 40, page 12):

"Respondent's order books being produced it be-
" came apparent, from an inspection of them, that
" changes had been made in many of the charges
" therein since they had been originally entered; and
" after a careful and laborious examination of said
" order books, ten in number, the Master was satisfied
" that entries with reference to revolving cue racks to

" the number of two hundred and eighty-five, had been " falsified."

A spirit of perversity and rebellion which is not tolerated in a court of equity is exhibited by the appellant St. Germain in his answer to the very first question asked him on the accounting (see Ans. to question 1, pg. 16, Transcript) and is continued throughout the accounting. In his answer to question 2, pg. 16, he says that it is impossible to make a statement from his books showing the number of revolving cue racks made and sold by him, and that he had attempted to make such a statement, but could not do so, and this knowing that he had changed the books apparently to prevent any statement being made. He subsequently did produce what he claimed was a correct statement, and then the Master discovered the changes in the books. It is submitted that this Court will find that St. Germain's testimony is unworthy of belief from first to last.

Resume.

It is believed that it will be apparent from the foregoing resume of the evidence that the appeal is perverse, and is taken merely for the purpose of delay. It would have been supposed that the appellant would have considered himself fortunate in being able to get off upon the easy terms imposed by the Court and the Master. From beginning to end the appellant appears to have aimed at delay. His first proceeding was to demur to the bill. His demurrer being overruled, an answer attacking the good faith of the Chicago suit was filed. On the hearing before the Examiner no testimony concerning the Chicago suit was offered. The interlocutory decree was entered May 12th, 1884. On August 17, 1885, defendant made a motion to amend the answer, setting up failure of complainant to mark his cue racks with the word " patented," after the Master had discovered the

changes in his book, at the hearing on December 3d, 1884. This motion was decided May 20th, 1886, against defendant after the appeal to this Court had been filed. On the hearing before the Examiner he produced no expert testimony. He admitted that he was not an expert, and yet at the same time testified as to the alleged anticipation of complainant's patent by three patents which he produced. Add to this his extraordinary conduct before the Master, his admission of the infringement (fol. 272); his admission that he had changed the entries in his books, or directed the same to changed (fol. 101), and his subsequent attempt to avoid payment of damages by attempting to amend his answer so as to allege that complainant had omitted to mark his racks "patented" after the Master had discovered the changes in the books, in the apparent hope that he might thereby escape payment of the damages which would probably be and were awarded to complainant; all of these facts go to show that this appeal is a most unusual one, and that it is prosecuted in no ordinary spirit.

Conclusion.

It is therefore respectfully submitted that this case is one in which the appeal has been prosecuted merely for delay, and that, as the same has delayed the judgment of the inferior Court, the judgment of said Court should be affirmed with damages at the rate provided by Rule 23 of this Court, together with interest and costs.

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